

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 9742763
JOINT APPENDIX TO BRIEFS

United States Court of Appeals

DISTRICT OF COLUMBIA

DAVID BROWN and MORRIS ABRAMS, *Appellants*,

VS.

ISRAEL RUDBERG and THOMAS F. O'NEILL, *Appellees*.

Appeal from the District Court of the United States
for the District of Columbia

*United States Court of Appeals
for the District of Columbia*

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Joseph W. Starnes
CLERK

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United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9742

DAVID BROWN and MORRIS ABRAMS, *Appellants*,

VS.

ISRAEL RUDBERG and THOMAS F. O'NEILL, *Appellees*.

Appeal from the District Court of the United States
for the District of Columbia

JOINT APPENDIX TO BRIEFS

401 Filed Sep 24 1945 Charles E. Stewart, Clerk
IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE
DISTRICT OF COLUMBIA
ISRAEL RUDBERG, 310 West Cherry Street, Shenandoah,
Pennsylvania, and THOMAS F. O'NEILL,
32 Jardin Street, Shenandoah, Pennsylvania,
Plaintiffs,

vs.

DAVID BROWN, t/a Lessner's Wine & Liquor Store,
1448 New York Avenue, N. W., Washington, D. C.
and MORRIS ABRAMS, Bank of Commerce & Savings
Bldg., Washington, D. C.

Defendants.

CIVIL ACTION No. 30777

Complaint for Cancellation of Contract and Injunction

1. This is a complaint for cancellation of a written contract and for an injunction incident thereto.

2. On, to wit, the 17th day of August, 1945, the parties hereto entered into a written agreement wherein the plaintiffs undertook to purchase the good will, leasehold interest, trade name, merchandise, equipment, etc., used in the conduct of a retail liquor business located at 1448 New York Avenue, N. W., Washington, D. C., which said business the defendant Brown undertook to sell to the plaintiffs. A copy of said agreement is attached hereto and prayed to be read as part hereof.

3. Said agreement provides, *inter alia* as follows:
"This agreement is contingent upon the approval by the Alcoholic Beverage Control Board of the transfer of the
402 existing Class A license and the obtaining of a Federal Wholesale Stamp Tax by the buyers. The buyers do hereby specifically agree that upon the execution of this agreement they will immediately make appli-

cation for a transfer of the license aforesaid, at their own expense, and will thereafter diligently prosecute said application until it has been acted upon by the Alcoholic Beverage Control Board, they cannot legally qualify as Plaintiffs allege that they conferred with counsel familiar with the laws of the District of Columbia and the regulations of the said Alcoholic Beverage Control Board for the purpose of executing the necessary papers incident to the transfer of said Class A license but, were advised and believe and therefore aver that under the laws of the District of Columbia and the regulations of the said Alcoholic Beverage Control Board, they cannot legally qualify as applicants or holders of said license and therefore, because of the provisions of the law and the regulations aforesaid, they are unable to perform the terms and conditions of the agreement aforesaid.

4. That at the time the written agreement aforesaid was entered into they deposited with the defendant, Morris Abrams, attorney for the vendor, the sum of \$5,000.00 to be held as a deposit by him pending the full settlement and completion of the agreement aforesaid, which said sum the said Morris Abrams still holds in his possession.

5. Upon being advised by counsel of their inability to perform the terms and conditions of the agreement aforesaid, and in view of the contingency provided for in said agreement, the plaintiffs, through their attorney, on, to wit, September 12, 1945, made a demand in writing upon the said defendant Abrams for a return of the \$5,000.00 aforesaid, after advising the said Abrams of their inability to legally perform the terms and conditions of said agreement, which demand the said defendant Abrams, in writing, refuses to comply with and in writing notified counsel for the plaintiffs that the defendant Brown claims a forfeiture on the part of the plaintiffs of the full
403 sum of \$5,000.00 aforesaid and further that one Richardson, a broker in the transaction, claims a

commission out of said sum and has made demand on the defendant Brown for the payment of his said commission. Said defendant Abrams, in writing, has notified plaintiff, through their attorney, that he will "continue to hold the \$5,000.00 until such time as this matter is finally adjudicated."

6. Plaintiffs are advised and believe that the defendant Brown is not legally or equitably entitled to claim any forfeiture on the part of the plaintiffs, nor is he entitled to assert any breach of the agreement on their part because of the fact that he is familiar with the laws of the District of Columbia and the regulations of the Alcoholic Beverage Control Board and has personal knowledge that the plaintiffs cannot legally qualify to hold and accept a transfer of the license referred to in said agreement.

7. A justiciable issue now exists between the parties by reason of which the plaintiffs are entitled to seek the aid of this Court in a declaratory judgment determining their legal rights and status within contemplation of the terms and conditions of the written agreement aforesaid.

WHEREFORE the plaintiffs, Israel Rudberg and Thomas F. O'Neill, demand judgment of and against the defendant Brown in the form of a judgment cancelling the written agreement of August 17, 1945, aforesaid, or in the alternative for a declaratory judgment determining their legal rights and status within contemplation of the terms of the agreement aforesaid and a temporary injunction as well as a final injunction against the defendant Abrams restraining and enjoining him from paying out any part of the \$5,000.00 sum referred to in this complaint pending a final determination of the rights and duties of the parties, and a further judgment enjoining and directing the defendant David A. Brown to return or cause to be returned to the plaintiffs the sum of \$5,000.00 aforesaid as well as for such other judgment as the

nature of the case may require and to which they may be properly entitled.

AUSTIN F. CANFIELD

AUSTIN F. CANFIELD

MILFORD F. SCHWARTZ

MILFORD F. SCHWARTZ

Attorneys for plaintiffs,
637 Woodward Building,
Washington, D. C.

405 Filed Sep 24 1945 Charles E. Stewart, Clerk

Agreement

This agreement, entered into in Washington, District of Columbia, this 17th day of August, 1945, by and between David Brown, hereinafter referred to as the Seller, and Israel Rudberg and Thomas F. O'Neill, hereinafter referred to as the Buyers.

1. The Seller is the owner of the Class A Beverage Business, located at 1448 New York Avenue, Northwest, Washington, D. C.

2. The Seller agrees to sell and the Buyers agree to purchase the aforesaid business, including the good-will, leasehold interest, trade-name, stock of merchandise, fixtures and equipment, 1941 Chevrolet Panel delivery truck, and all other assets of every nature used or in anywise connected with the conduct of the aforesaid business, except cash money.

3. The Buyers agree to pay to the Seller for all of the assets the sum of Thirty-five thousand (\$35,000.00) Dollars, plus the dollar for dollar cost to the Seller of the inventory of merchandise and supplies on hand as at the close of business of the Saturday following notification that the Alcoholic Beverage Control Board is ready to transfer the license to the Buyers. Said inventory shall be taken on the Sunday following such notification.

4. Simultaneously with the execution of this agreement, the Buyers shall deposit the sum of Five Thousand (\$5,000.00) Dollars with Morris Abrams, as trustee, to secure the performance of this contract. An additional sum of Thirty-five Thousand (\$35,000.00) Dollars, in cash, shall be paid on the date of settlement. The balance of the total purchase price shall be paid at the rate of Two Thousand (\$2,000.00) Dollars per month, plus interest at the rate of six percent (6%) per annum, and shall be evidenced by a promissory note secured by chattel deed of trust on the assets hereby sold. The note shall contain a provision giving the makers the option of paying a larger sum in any amount at any time.

5. The parties hereby agree that this agreement
406 is contingent in its entirety upon a valid assignment from the Seller to the Buyers of the Sellers existing lease for the said premises, expiring February, 1950. The said lease provides for a monthly rental of Five Hundred Thirty Three Dollars and Thirty-Three cents (\$533.33). It is expressly agreed and understood that the Seller shall help procure the valid assignment of his lease to the Buyers or a new lease for a similar term, and for a similar rental. It is expressly agreed and understood that if the Seller shall not procure the valid assignment of his lease to the Buyers, or a new lease for a similar term, then in that event this agreement in its entirety shall be null and void, at the option of the Buyers. The Buyers agree, however, that in the event that the Lessors should request a suitable personal indemnitor before assigning the lease, then and in that event the Buyers agree that they will furnish to the Lessor such an indemnitor.

6. This agreement is contingent upon the approval by the Alcoholic Beverage Control Board of the transfer of the existing Class A license, and the obtaining of a Federal Wholesale Stamp Tax by the Buyers. The Buyers do hereby specifically agree that upon the execution of this agreement they will immediately make application for a

transfer of the license aforesaid, at their own expense, and will thereafter diligently prosecute said application until it has been acted upon by the Alcoholic Beverage Control Board of the District of Columbia.

7. The date of settlement of this agreement is hereby fixed as and at the opening of business of the Monday following the readiness of the Alcoholic Beverage Control Board to transfer the said license to the Buyers. All adjustments, including licenses, rent, insurance, taxes, and etc., shall be made as at the opening of the business on that date.

8. The Seller hereby agrees to convey the aforesaid business and assets to the Buyers by a valid Bill of
407 Sale, free and clear of encumbrances of every nature whatsoever and agrees to comply with the Sales in Bulk Law in force in the District of Columbia.

9. All deposits with the utility companies shall belong to the Seller.

10. The Seller agrees not to engage directly or indirectly, in a business similar to the business hereby sold, within a radius of ten (10) city blocks of the aforementioned premises for a period of five (5) years from the date hereof.

11. It is hereby expressly agreed and understood that revocation of the Sellers Class A license prior to the date of settlement shall invalidate this agreement, and shall not constitute a default of the part of the Seller.

12. The parties hereto being mutually desirous of avoiding litigation in connection with this agreement, in the event that the within sale is not consummated and the amount of damage resulting as a breach of this agreement not being ascertainable at this time, it is mutually agreed that in the event of a default by either party to this agreement, the defaulting party shall forfeit as liquidated damages for the breach of the agreement, the sum of Five Thousand (\$5,000.00) Dollars, and the payment of the said sum to the aggrieved party shall constitute full and final

settlement; upon the payment of the said sum the agreement shall cease and determine. If the Buyers shall be the defaulting party, the said Morris Abrams shall be authorized to pay over to the Seller the Five Thousand (\$5,000.00) Dollars, which has been deposited with him in escrow.

13. Upon the final consummation of this agreement and payment by the Buyers to the Seller of the cash herein provided, the Seller shall pay to Guy Richardson, the sum of Seventeen Hundred and Fifty (\$1,750.00) Dollars as a commission. In the event that there shall be a default in the terms of this agreement resulting in the payment of liquidated damages heretofore provided for, then and in that event, the said Guy Richardson, shall be entitled to receive one half of the commission above provided for.

408 14. This agreement represents the entire understanding between the parties hereto, and no agreement which is not herein incorporated shall be binding upon the parties hereto.

15. This agreement shall be binding upon the parties hereto, their heirs, executors, administrators and/or assigns.

IN WITNESS WHEREOF, the parties have hereunto affixed their hands and seals this 17th day of August, 1945.

s/ David Brown (SEAL)

s/ Israel Rudberg (SEAL)

s/ Thomas F. O'Neill (SEAL)

IN THE PRESENCE OF:

s/ Guy Richardson

* * * *

409 Filed Oct 16 1945 Charles E. Stewart, Clerk

Separate Answer of Morris Abrams

First Defense

Plaintiffs have failed to state a claim against this defendant upon which relief can be granted.

Second Defense

This defendant admits the allegations contained in paragraphs two (2) and four (4) of the Complaint; of that portion of paragraph three (3) reciting part of the agreement between plaintiffs and defendant Brown *inter alia*; and of that portion of paragraph five (5) alleging the demand made by plaintiffs on this defendant September 12, 1945 for return of deposit, the refusal of this defendant to return said deposit, the declaration of a forfeiture by defendant Brown, the claims by Richardson of a brokerage commission, and the notice by this defendant to plaintiffs that he will continue to hold said deposit pending final adjudication of this matter. This Defendant has no knowledge about the remaining allegations of the Complaint, and can therefore neither admit nor deny the same, but if they be material, demands strict proof thereof.

Third Defense

Further answering the Complaint, this defendant alleges that he is a mere stakeholder of the deposit put up by plaintiffs; that he is holding said deposit; that he is willing to be bound by the judgment of this Court; and that he will fully and promptly carry out the terms of such order as the Court shall make herein.

WHEREFORE having fully answered, this defendant asks that the Complaint be dismissed as to him without costs.

Shinberg & Shinberg
By LEON M. SHINBERG
1331 G Street, N. W.
Washington, D. C.

Attorney for Defendants.

I hereby certify that copies of the foregoing Separate Answer of Morris Abrams were mailed, postage prepaid, this 13th day of October, 1945, to: Austin F. Canfield,

Woodward Building, Washington, D. C.; and Milford F. Schwartz, Investment Building, Washington, D. C., attorneys for plaintiffs.

LEON M. SHINBERG

LEON M. SHINBERG

Attorney for Defendants.

* * * *

411 Filed Oct 16 1945 Charles E. Stewart, Clerk

Separate Answer of David Brown

First Defense

Plaintiffs have failed to state a claim against this defendants upon which relief can be granted.

Second Defense

This defendant admits the allegations contained in paragraphs numbered two (2) and four (4) of the Complaint herein, and also admits the allegations contained in that portion of paragraph numbered three (3) of the Complaint herein which recites *inter alia* a part of the agreement mentioned in paragraph numbered two (2) of the Complaint herein. This defendant has no knowledge about the allegations contained in paragraph numbered five (5) of the Complaint herein, and therefore can neither
412 admit nor deny the same, but if they be material, he demands strict proof thereof. This defendant denies each and every other material allegation contained in the Complaint herein.

Shinberg & Shinberg

By LEON M. SHINBERG

LEON M. SHINBERG

Attorneys for Defendant,

David Brown

1331 G Street, N. W.

Washington, D. C.

I hereby certify that copies of the foregoing Separate Answer of David Brown were mailed, postage prepaid, this

13th day of October, 1945, to: Austin F. Canfield, Woodward Building, Washington, D. C.; and Milford F. Schwartz, Investment Building, Washington, D. C., attorneys for plaintiffs.

LEON M. SHINBERG

LEON M. SHINBERG

Attorney for Defendant

413 Filed Apr 12 1946 Charles E. Stewart, Clerk
DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT
OF COLUMBIA

RUDBERG, et al., Plaintiff.

vs.

BROWN, et al., Defendant.

Civil Action No. 30777

Pretrial Proceedings

STATEMENT OF NATURE OF CASE:

The plaintiffs bring this action against the defendant Brown and Abrams for the cancellation of an alleged agreement of sale by virtue of which the defendant, Brown, purported to sell to the plaintiff O'Neill and Rudberg the liquor business operated by him, the sum of \$5,000.00 paid on account of the purchase price and is held by the defendant, Abrams in his capacity as attorney for the defendant, Brown. According to plaintiff the agreement was contingent upon the approval by the A B C Board of the transfer of existent Class A license held by the defendant, vendor to the plaintiff, vendee. The plaintiffs further allege that upon consultation of counsel they found that under the law of the Dist. of Col. with respect to such matters they could not qualify as holders of the license because they were not residents of the District within the regulatory period. As a consequence, upon the refusal of the defendant to cancel the agreement and to refund part of the purchase price paid they bring this action.

The defendant, in defense admits the agreement, receipt and present holding of the down payment by defendant Abrams as a stakeholder; denies breach of any condition or agreement on the part of defendant.

Answering, further, they claim that plaintiffs refuse to perform their part of the contract.

STIPULATIONS: By agreement of counsel for the respective parties, present in Court, it is ordered that the subsequent course of this action shall be governed by the following stipulations unless modified by the Court to prevent manifest injustice:

Agreement between the parties dated Aug. 17, 1945, is admitted without formal proof.

Alcohol Beverage Control Regulations, in so far as pertinent, may be received without formal proof.

All of the regulations, revised edition of Nov. 1, 1944, may be received without formal proof subject to the usual objections.

414 Dated April 12, 1946

MATTHEW F. MCGUIRE
Pretrial Justice.

REMARKS of Pretrial Justice for consideration of Trial Justice:

Attorneys authorized to act:

AUSTIN F. CANFIELD

MILFORD SCHWARTZ

Attys. for Plaintiff.

LEON M. SHINBERG

Atty. for Defendant.

* * * *

439 Filed Jan 10 1947 Charles E. Stewart, Clerk

*Order Overruling Plaintiffs' and Defendants'
Motions for Summary Judgment*

This cause having come on for hearing upon the plaintiffs' motion for summary judgment and the defendants' motion for summary judgment, the affidavits and points

and authorities in support thereof, and, after argument by counsel, it is, by the Court, this 10th day of January, 1947,

ADJUDGED, ORDERED AND DECREED that the plaintiffs' motion for summary judgment be and the same is hereby overruled; and it is further

ADJUDGED, ORDERED AND DECREED that the defendants' motion for summary judgment be and the same is hereby overruled.

MATTHEW F. McGUIRE
Justice

No objection as to form.

PHILIP SHINBERG

Shinberg and Shinberg

Attorneys for Defendants

AUSTIN F. CANFIELD

MILFORD SCHWARTZ

Attorneys for Plfs.

* * * *

440 Filed Nov 21 1947 Harry M. Hull, Clerk

*Findings of Fact and Conclusions
of Law*

This action came on for hearing upon the complaint filed herein, answer of the defendants thereto, testimony being taken in open court and argument had thereon, whereupon, upon consideration thereof the Court makes the following:

Findings of Fact

1. The plaintiffs are non-residents of the District of Columbia; the defendants are residents of the District of Columbia. The Court has jurisdiction of the action.

2. That in June or July, 1947, the defendant Brown was the owner and operator of a certain liquor store and business in the District of Columbia, trading under the firm name and style of Lessner's Liquor Store. That said de-

fendant Brown by an instrument in writing designated one Guy Richardson, a broker engaged in business in the said District, as his agent to offer the said store for sale. That said Brown fixed the price, terms and conditions of sale thereof. Said Richardson advertised said business for sale in a Washington newspaper. The defendants concede in open court and the court so finds that the said Richardson became and was the agent of the defendant Brown for the purpose of the sale of this store.

3. That one Harry Rudberg, a brother of plaintiff Israel Rudberg, became a prospective purchaser of
441 said business, and entered into negotiations therefor with said Richardson. That later, said Harry Rudberg unable to make financial arrangements for said purchase, withdrew from the negotiations, and immediately thereafter, the plaintiffs herein entered into the negotiations with said Richardson for the purpose of completing said deal, all of which was known to the defendant Brown.

4. That all during the negotiations all parties to the proposed transaction knew that the plaintiffs were non-residents of the District of Columbia, and had not been gainfully employed in the District of Columbia for one year prior to the transaction, and had never had a liquor license in the District of Columbia, and that because of this the plaintiffs could not legally qualify as transferees of the liquor Class "A" license from the defendant Brown unto them as a condition of the proposed sale.

5. That on August 17, 1947, the plaintiffs and the defendant Brown entered into a written agreement, wherein the defendant Brown agreed to sell and the plaintiffs agreed to buy the aforesaid business. That said agreement was prepared by the defendant Abrams, at the instance of and as the attorney for the defendant Brown.

6. The Court finds that under the language of the agreement the plaintiffs were prohibited by law from complying with the condition contained in Paragraph 6 thereof by reason of Section 32 of the Rules and Regulations duly

published by the Commissioners of the District of Columbia (under the authority of the Act of Congress January 24, 1934) and therefor their compliance therewith are excused.

7. The Court finds that the defendant Brown did not comply or attempt to comply with the conditions imposed upon him in said written agreement contained in Paragraph 5, which he was duty bound to do in order to make said agreement legally binding and effective.

442 8. The Court finds that the plaintiffs at no time agreed with the defendant to form a corporation to take title to said business, nor did they ever agree to employ the manager of the business then employed by the defendant Brown so as to enable them to comply with the aforesaid Alcoholic Beverage Control Laws.

9. The Court finds that the Act of January 24, 1934, and the rules and regulations of the Alcoholic Beverage Control Board passed thereunder controlled the parties to the agreement in the negotiation and execution of the written agreement executed by the parties hereto.

10. That the plaintiffs have carried the burden of proof in this action and that all of the equities are resolved in favor of the plaintiffs under the issues made and presented.

11. That the defendant Abrams holds the \$5,000.00 deposit made by the plaintiffs at the execution of the written agreement of August 17, 1947 and that the same is still being held by him to await the judgment of this court.

Conclusions of Law

1. That the plaintiffs are determined to be prohibited by law from complying with the conditions of the written agreement dated August 17, 1947.

2. That the plaintiffs are entitled to a declaratory judgment from this Court holding that the written agreement aforesaid is null and void, and that plaintiffs are entitled to the relief prayed for in the complaint.

3. That the defendant Abrams be required to forthwith surrender to the plaintiffs or their attorneys of record, the \$5,000.00 held by him pending the determination of this action, and their receipt therefor to act as a full release of him from all liability and costs.

4. Plaintiffs' counsel will prepare an order for judgment in accordance with these conclusions and settle on notice to defendants' counsel.

F. DICKINSON LETTS
Justice

Seen:

PHILIP SHINBERG
Atty. for Dfts.

* * * *

443 Filed Nov 21 1947 Harry M. Hull, Clerk

Judgment

This action came on to be heard upon the pleadings filed herein and the evidence adduced in open Court, and the Court, having filed its findings of fact and conclusions of law herein, THEREUPON, upon consideration thereof, it is by the Court this 21st day of November, 1947,

ADJUDGED, ORDERED AND DECREED as follows:

1. That the contract dated August 17, 1945, between the plaintiffs, Israel Rudberg and Thomas F. O'Neill, and the defendant, David Brown, be and the same hereby is cancelled.

2. That the defendants, David Brown and Morris Abrams, be and they hereby are ordered and directed to pay to the plaintiffs the sum of Five Thousand (\$5,000.00) Dollars, and that the plaintiffs may have execution therefor as at law.

3. That the defendant, David Brown, pay the costs of this action as taxed by the Clerk of this Court.

F. DICKINSON LETTS
Justice

Seen:

PHILIP SHINBERG

Atty for Dfts.

444 Filed Nov 23 1947 Harry M. Hull, Clerk

Notice of Appeal

Notice is hereby given this 28th day of November, 1947, that David Brown and Morris Abrams, defendants in the above entitled matter, hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 21st day of November, 1947 in favor of Israel Rudberg and Thomas F. O'Neill, the plaintiffs herein, and against David Brown and Morris Abrams, the defendants herein.

PHILIP SHINBERG

Attorney for Defendants

1331 G Street, N. W.

Washington, D. C.

19

Harry Rudberg

* * * *

Direct Examination

* * * *

BY MR. CANFIELD:

20 Q Your name is Harry Rudberg? A Yes, sir.

* * * *

Q Are you a brother of Israel Rudberg? A Yes, sir.

* * * *

Q When you left Washington where did you move?

A I moved to Philadelphia.

Q How long did you live there? A Roughly, about two years, I would say.

Q At the time you left here, state whether you had

provided for a subscription to the Washington Evening Star? A Yes, I did.

* * * *

Q Did there come a time when your attention was attracted to an advertisement with reference to a liquor store in Washington? A Yes.

Q Tell the Court in your own way what you saw, what you did. A There was an ad in the paper about a liquor store for sale under the name of Richardson, a broker whom I contacted about it and came down here to look at it.

Q Did you know Mr. Richardson? A That was the first time I met him.

Q At the time you read the ad, you did not know him? A No.

Q Now, how did you contact Mr. Richardson before you came down? A I think I either wrote him or called him on the 'phone.

22 Q As a result of that contact, did you come to Washington? A Yes, sir.

Q Fix the time approximately and tell what happened? A Well, I made an appointment with him, he showed me the place and at that time I looked it over and I told him I would think it over.

Q Where was the place he showed you? A Lessner's, 15th and New York Avenue.

Q What kind of store is that? A A liquor-package store.

Q State whether or not you were in the store on the first visit. A I walked in. We did not talk anything about it, as I remember.

Q On the first occasion did you reach the defendant, Mr. Brown? A I think I did.

Q Who introduced him? A Mr. Richardson.

Q Did you discuss with Mr. Richardson— Did you discuss with Mr. Brown the terms and conditions of sale? A I think not. In other words, Richardson merely took

me in there. As I remember, there was a clerk or somebody in there who did not—whom he did not want
 23 to have hear any conversation about the sale, or anything.

Q Now if you did meet Mr. Brown on this occasion, did you discuss with him the purchase of the store?
 A No, we went back in Mr. Richardson's office.

Q Where was that? A The Peoples' Life Insurance, as I recall it.

Q All right. Now, did you discuss with Mr. Richardson anything on this first visit? A On this first visit I actually had \$25 or \$30 in my pocket. I told him I would go back and get financial arrangements to see what I could do with this.

Q Did you discuss with him the terms and price of the sale? A Yes, I think it was \$35,000 for good-will, plus dollar-for-dollar for stock.

Q So that the entire transaction would approximate \$75,000? A That is right.

Q State whether or not anything was said about a deposit. A He started, I think, around \$100, I told him I did not have it; I told him I had \$25 on me, told him \$25 or \$30 and I would need train fare back, or hotel, and he said even \$15 or \$10 because he said at that time he
 24 did not have exclusive on it and if I would let him have even a small deposit to let him have exclusive on it,—so I gave him \$10.

Q On the first occasion, was your brother mentioned, or Mr. O'Neill mentioned? A No.

Q Was anyone mentioned by you? A No, just myself.

Q When you gave Mr. Richardson the ten dollars, did he give you a receipt? A Yes, he did.

Q I hand you a piece of paper and ask you if you can identify it?

THE COURT: Is it offered?

MR. CANFIELD: Yes.

THE COURT: Any objections?

MR. SHINBERG (examining): I have no objection.

THE COURT: Plaintiffs' Exhibit 1 is received.

(The document referred to was marked "Plaintiffs' Exhibit No. 1" for identification and received in evidence.)

BY MR. CANFIELD:

Q Now, at that time did you have sufficient money to go into this yourself? A No, I did not.

Q Did you discuss with Mr. Richardson who you
25 were going to take? A At that time I did not.

Q Did there come a time later when you again contacted Mr. Richardson? A Yes, at that time I contacted my brother.

Q And your brother is Israel here (indicating)?
A Yes, sir.

Q How did you contact him? A By 'phone from Philadelphia to Shenandoah.

Q Now you cannot give the discussion with your brother, but as a result of your conversation with him, did you discuss it with anybody else? A I called my brother-in-law, Irving Selis.

Q State where he lives. A 24 Crittenden Street.

Q In the District? A Yes.

Q You married his sister? A His wife's sister.

Q Where was Mr. Selis at the time you tried to contact him? A In the mountains, in the Catskills somewhere.

Q And did you call Mr. Selis? A I spoke with him.

Q For what purpose? A To borrow some money.

26 Q To borrow some money? A Yes, secure a loan. I wanted a loan to buy the store.

Q And did Mr. Selis consent to give you this money?
A It was very difficult to hear, the line seemed to be very bad, and I did hear him say, well, he would have to think it over.

Q Now, did you have any further telephone conversation with Mr. Selis after that time? A I— During that time I had been contacted by Richardson again to find out what was going on.

Q Mr. Richardson? A That is right.

Q Now, did you also contact your brother Israel? A I kept in touch with him, I always do.

* * * *

Q Now did there come a time when Israel indicated he might be interested in that venture? A

Well, he said he would loan me some money, if I could not get it all from my brother-in-law, he felt he would be able to make a loan to me.

Q Now did there come a time when your brother and Mr. O'Neill wanted to come in on the deal? A Well, I had spoken to Mr. Selis again. It was getting along towards the middle of August and he said he had contacted his brother— That is, Mr. Selis had contacted his brother who is also in town here.

Q They are partners, are they not? A Yes, sir. And he felt he could not afford to lend me any money at that time.

Q Well, now, prior to that time had you come to Washington with Israel with reference to trying to bind this deal? A As I recall, I think I was down here once.

Q With Israel? A Yes, sir.

Q State whether or not you brought an accountant at that time? A Yes.

Q What happened? A Well, the accountant went into the store.

Q Was Israel there? A Yes, and Mr. Brown. And Mr. Brown showed him some bills that were on the desk there and that was all.

Q Was Mr. Richardson present? A At that time I think he was.

Q State whether or not at that time you had \$1,000 in your possession. A I did.

Q Where did you get that \$1,000? A After I contacted my brother on the 'phone and told him my brother-in-law is out,—several days after that he called me on the 'phone and told me to put up \$1,000 and he would reimburse me for it.

Q At that time was it understood that Israel and Mr. O'Neill would take a piece of it? A Yes. I was surprised when he called me because I had forgotten about the whole thing. When he told me he put up \$1,000, at that time I could not handle him. I did not talk with him about what arrangements would be made.

Q Well, did he give you \$1,000? A Yes.

Q And was it your understanding that he, Israel, and O'Neill were going to take over the business? A Yes.

Q Who did you contact about it? A I met Mr. Richardson— No, Mr. Abrams, Mr. Brown and Mr. Richardson in Mr. Abrams' office.

Q State whether or not you and Abrams and
29 Brown and Richardson had a conversation about it.

A I do not recall. We met Mr. Brown and Mr. Richardson in Mr. Abrams' office as I recall it.

Q Who was Mr. Abrams? A The attorney for Mr. Brown.

Q Who told you he was Mr. Brown's attorney? A Mr. Brown and Mr. Richardson.

* * * *

Q When did this take place? A I would say the early part of August.

Q Now who was present at the conference with Mr. Brown, Mr. Richardson and Mr. Abrams and yourself? Was that all? A Yes, sir.

Q Tell us what took place? A Well, I had the thousand. Mr. Abrams and Mr. Brown and Mr. Richardson were talking among themselves. From the conversation they had they apparently decided that a thousand was not enough since five was required.

Since they were not willing to accept the thousand
Mr. Richardson and I left Mr. Abrams' office, and
30 went to Mr. Richardson's office and he had me sign
an ordinary printed form as a receipt for the thousand dollars and I got the ten back.

Q Was there an agreement drawn by Mr. Richardson for your signature? A Yes.

Q When, before you went to Abrams' office, or after you came back? A After I came back.

Q As I understand, Mr. Brown and Mr. Abrams would not accept the thousand? A Yes.

Q And then you went to Richardson's office? A Yes.

Q Was there a printed form? A Well, it was really for the thousand dollars, really.

Q Well, did you get a copy of it? A I do not recall. It was a printed form. Since they did not accept it, he thought he would take it and give me this receipt.

Q And did you give him the thousand dollars? A Yes.

Q What did you do after that? A I went back
31 home and contacted my brother and told him what I had done.

Q Now did you make a further effort to get Mr. Selis to loan you the money after that? A No, he was completely done.

Q You say that was the early part of August. Did there come a time when you contacted your brother with reference to your brother-in-law pulling out of the situation? A That is right.

Q How did you contact your brother? A I wired him.

Q I hand you this telegram and ask you to identify it.
A That is right.

Q And that is dated August 10? A That is right.

Q Is that the date you sent him the wire? A That is correct.

Q What prompted you to send that wire? A Because I had called my brother-in-law.

Q Again? A Yes, sir; and he had told me it was definitely off.

Q What was definitely off? A His loaning me the money.

32 THE COURT: Any objection?

MR. SHINBERG: None.

THE COURT: Plaintiffs' two will be received in evidence.

* * * *

Q Mr. Rudberg, to take up the loose ends, late in July or early in August you had contacted your brother-in-law, you got no satisfaction that he would lend you the money.

A Right.

Q After that Israel indicated an intention to go in and gave you \$1,000 to bring to Washington? A Yes, sir.

Q Then as I understood, just before the recess, you made a further effort that on or about August 10 to again get the money from Mr. Selis? A That is right.

Q He rejected the application for that loan and you sent the telegram to Israel? A That is right.

* * * *

33 THE COURT: You can read it.

MR. CANFIELD (reading): "Philadelphia, Pennsylvania.

"August 10. 12:50 p. m.

"Israel Rudberg,

"310 West Cherry St., Shenandoah, Pennsylvania."

That is your mother's address?

THE WITNESS: Yes.

MR. CANFIELD (continuing): "Aaron called—Irvig decided War Ending; proposition Uncertain. Everything Canceled. Harry."

BY MR. CANFIELD:

Q The "Aaron" referred to is Mr. Aaron Selis?

A Yes.

Q "Irving" is his brother? A Yes.

Q And partner? A Yes, sir.

Q Now, after sending that telegram did Israel contact you further, either by 'phone or seeing you? A Well, from then on I did not do anything.

Q You dropped it? A Yes, sir.

Q Do you know whether or not Israel and O'Neill
34 then attempted to take over? A That is right.

Q And they became interested in a transaction—in that transaction? A Yes, sir.

Q Now, from that time on, were you in this deal at all?
A No.

Q Were you in Washington on the 17th of August, when this agreement was executed? A No.

Q Had you ever been in Washington prior to the time you brought the thousand dollars and gave to Mr. Richardson in any way in connection with this deal? A No.

Q And I believe you did say Mr. Richardson gave you back the \$10 when you gave him the thousand? A That is right.

Q Where did you get the thousand dollars? A From my brother.

Q And how did you give the money to Mr. Richardson?
A By check.

Q In other words, Israel gave you his check, and he in turn took yours? A Yes, sir.

* * * *

35

Cross Examination

BY MR. SHINBERG:

Q Mr. Rudberg, when you first came here from Pennsylvania it was your intention to go into business for yourself; is that right? A Yes, sir.

Q And at that time you did not contemplate taking in your brother Israel, with you, or any one else? A That is right.

Q As I understand you to say before, this involved

a potential of \$75,000? A That is right.

Q How much of that was supposed to be in cash? A As I remember, I think \$35.

Q \$35,000? A That is right.

Q And where were you going to get the money? A From my brother-in-law in town.

Q From Mr. Irving Selis? A That is right.

Q How did you expect to get \$35,000 from him? A No, I had fifteen of my own.

Q You had \$15,000 of your own money? A That is right.

Q Well, why did you obtain a thousand dollars,
36 from your brother Israel to make the deposit to Mr. Richardson? A Because I was out. When I contacted my brother-in-law on the 'phone in the New York mountains there, he turned me down.

* * * *

37 Q On the occasion of your first visit you told
38 Mr. Richardson where you were from? A That is right.

Q He knew you were from Pennsylvania? A That is right.

* * * *

Q When did you make up your mind that you wanted to be in the liquor business in the District of Columbia? A When I saw the advertisement in the paper.

Q That is the first time? A That is correct.

* * * *

39 Q And why did you pick out the liquor business to go into in the District of Columbia? A Because a friend of mine when I went to school in Lancaster, Pennsylvania—there was a friend of mine in that business in Philadelphia and he seemed to like it very well and showed me what there is in it, and since I had lived in Washington five years prior to that time, 1935 to 1939, my relatives are here, in other words, my brother-in-law,

I felt I would like to go down here.

Q You felt this would be a profitable business for you to engage in? A That is right.

* * * *

40 Q You mean Mr. Richardson made no reference to you of the fact since you were non-resident you were not in position to buy this liquor store in your own name? A That is correct; that is right.

Q How long were you in Mr. Richardson's office on that first occasion? A Probably an hour, I would say.

* * * *

Q And during the time the only thing that happened was that you discussed the question of the deposit, and he agreed to take \$10? A That is right.

41 Q And nothing else was discussed? A No, sir.

Q Now you contacted Mr. Selis about this thing, how much was Mr. Selis supposed to lend you for the purpose of buying the store? A The amount of the key.

* * * *

Q That is \$35,000? A Yes, sir.

Q How was Mr. Selis to be protected for his \$35,000? A We did not talk about that.

* * * *

Q Well, isn't it a fact that at that time you expected Mr. Selis to evidence some interest in this business? A Well, in other words, I merely asked him if it were possible to borrow some money off him for the business.

Q When you say some money, you mean \$35,000? A Well,— In other words, I had \$15,000. I think really he could not spare the whole amount; then of course I would have to put mine in, if he could spare it, mine should be used for working capital.

Q Did you specifically ask him for \$35,000? A
42 No. I merely told him the figures that were involved, \$35,000 for good will and the stock, dollar for dollar.

Q Well, you told him where the store was located?
A Yes. He knew the store.

Q You told him as much as you knew about the store at that time? A That is correct.

Q And the purpose was to influence him to go in with you, into this transaction; is that right? A Yes. In other words to advance the money.

Q Now, at that time, Mr. Rudberg, you knew that you, yourself could not get a liquor license in the District of Columbia, did you not? A Definitely, I did not know that.

Q You did not? A I did not.

Q You had no knowledge of the liquor laws in the District of Columbia? A Exactly so.

Q Well, Mr. Selis was a resident of the District of Columbia, was he not? A Yes.

Q Had been for many years? A Yes.

Q Was engaged in business here, was he not?
43 A That is correct.

Q And still is? A Yes.

* * * *

44 Q Now, on that occasion Mr. Richardson told you that, as an individual, you could not obtain a license for this liquor store, did he not? A No.

* * * *

45 Q Is it not a fact that on both the first and second occasions when you talked to Mr. Richardson, he told you that as an individual, you were not in any position to obtain a liquor license in the District of Columbia, and you told him, "Don't worry about that; that is my problem." Is that or is that not true? A I am trying to recall.

He shared an office with a Mr. Levin and I am—I met him for a few minutes and he mentioned that as far as liquor license is concerned, "That gentleman will take care of everything."

* * * *

46 Q You mentioned previously that Mr. Richardson had offices with Mr. Levin and you discussed for a few minutes things with Mr. Levin? A I beg your pardon. I did not discuss. He merely introduced me and when we left the presence of Mr. Levin, Mr. Richardson then told me "That man will take care of obtaining the liquor license."

Q That man will take care of obtaining the liquor license? A Yes.

Q What did you think he meant by that? A Filling out the application, and things of that sort.

47 Q You knew there had to be an application filed?

A In my state there is, and in New Jersey.

Q How did you know an application had to be filed in the District of Columbia? A I took that for granted.

Q And you also took for granted there was nothing else to be done except file an application? A That is correct.

Q Did you give any thought to what had been, or what had to be done in obtaining the application? A No.

Q That was left completely blank? A Yes.

* * * *

Q Now, coming back to the question I put to you before, I ask you again as—I do not think you gave me a complete answer to it— Do you now deny that on either of these two occasions that you met with Mr. Richardson that he told you that as an individual you would not
48 he able to obtain a liquor license in the District of Columbia, because of your non-residence, and that you told him, "That is my problem; I will take care of that in my way." Do you deny that? A I definitely deny that.

Q You never made any such statement? A Not at all.

Q And you now deny Mr. Richardson told you you would not be eligible for a liquor license? A When I

met Mr. Levin that was the only statement he made, "That man will take care of obtaining the license."

* * * *

49 Q Now, enlighten me, please as to why, on the occasion of your second visit you gave Mr. Richardson the check for \$1,000 when you knew that you would not be able to obtain the money? A Well, I contacted my brother. In other words, even after— I put up the thousand for him, I still made a last attempt. Mr. Selis was supposed to be back in town a week before he actually came back.

In other words, he took an extended vacation for a week more, and I called him again and at that time he told me there was definitely nothing doing.

And that is when I got in touch with him and I wired my brother and told him as far as he was concerned, "I am out".

Q Well, I do not think you understand my question. I want to know why after you knew Mr. Selis was not going to give you the money, you still persisted in giving Mr. Richardson a thousand dollars on this business? A In the early part of August, when I spoke with my brother-in-law on the 'phone and he turned it down, I contacted my brother and he took over.

I thought Mr. Selis would be back in town, and as long as he had not come, I made one attempt again, and at that time he turned me down definitely, and of course I wired my brother it was out.

Q That was after you had given Mr. Richardson the thousand-dollar check? A Yes, sir.

Q And he had signed that form that was given to you? A Yes, sir.

Q And of course that form was never signed by Mr. Brown? A I do not know what happened.

Q You still had some hopes Mr. Selis was going to come into this thing although you felt at that time it was very doubtful and you were still going to try to keep him interested? A In other words, I felt if I could

50 speak to him personally, he might still be interested.

Q What was your intention when you gave Mr. Richardson the thousand-dollar deposit on the occasion of your second visit? Was it your intention that since you
51 had hopes you might still be able to interest Mr.

Selis and you had already discussed your brother coming into the picture, you still would remain in the picture if Mr. Selis would come through? A Yes, I would have given him his thousand dollars back and taken over the deal.

Q In other words, you would then have considered him out of the deal and gone ahead as originally planned?

A That is correct.

* * * *

Israel Rudberg

* * * *

Direct Examination

* * * *

BY MR. CANFIELD:

Q Your name is Israel Rudberg? A Yes, sir.

Q Where do you live? A Shenandoah.

* * * *

52 Q You use the word Shenandoah; that is Shenandoah, Pennsylvania? A Yes, sir.

Q Mr. Rudberg, what kind of business are you folks in up there? A Electrical appliances.

Q How long have you had that place of business? A About fifteen years.

Q Now your brother is Harry Rudberg, is he not, who just testified? A Yes, sir.

* * * *

53 Q I am from Shenandoah, am I not? A That is correct.

Q And I think we knew each other as boys? A Yes.

Q Now, I direct your attention to the summer of 1945.

A Yes.

Q State whether or not, at any time your brother Harry contacted you with reference to the purchase of a liquor store in Washington? A He called me— Of course, we do speak to one another two or three times a week, he will call up or we will call him, and he told us he owns a liquor store.

Well, it struck me funny; he said he paid \$10 down and told me about it. He married Mr. Selis' wife's sister and he told me he was going to see what he could work out.

Q Did he tell you what happened as far as the Selis' were concerned? A He told me he was going to see if he could get some money from him. I knew he did not have that kind of money.

I said, If you are short a certain amount, I think you can depend on me.

Q Now, did there come a further time when you had a conversation with him with reference to Mr. Selis?

54 A Well, he told me he had spoken to him once or twice on the 'phone and he was having a little difficulty but would have to contact his brother because the business he operates in town is on a partnership basis.

Q You are talking about Mr. Selis? A Mr. Selis. And then he said he is due back in a week; then it dragged another week.

I said, After all, he is only a brother-in-law, he possibly cannot turn you down flat, and I did not definitely make any arrangements for the money, in just those words; it just hung that way.

Q Now, did there come a time when you, yourself became interested in the business? A Well, Mr. O'Neill had sold us a building on Main Street and we had occasion to drive down to Philadelphia to see the Sun Ray Drug Company with reference to getting them as a tenant. It is a three-hour trip down and three hours back, so on the

way back we had a lot of time on our hands and I related to Mr. O'Neill this transaction Harry was telling about.

Q As a result of that Mr. O'Neill, did he become interested? A He became very much interested.

Q Now, did there come a time when your brother Harry called on you, or made any request for you
55 to put any money up? A What is that?

Q Did there come a time when your brother Harry made a request of you to put up any money for the deal? A Well, in the beginning I told him he could depend on me.

Q Well, did there come a time when he called on you? A Oh, yes.

Q Tell us what happened? A Well, through our conversation he sent me a telegram.

Q Well, before we come to the telegram? A He had told me before V-J Day when he had told me he was getting nowhere with Selis, I told him I had spoken to O'Neill, and I told him "You are done;" Richardson was calling him, I told him, you are going to miss out, and I gave him a thousand dollars.

Q What for? A To put down for myself.

Q Well, after you sent the thousand dollars, did you come to town? A Yes.

Q Tell us what happened? A Well, when we came
56 down we thought we would do whatever was necessary to get the deal straightened out, we brought along, as I recall, about a thousand dollars and Mr. O'Neill and myself went into Brown's office in the presence of Richardson and myself and we wanted to give him a thousand dollars, so we gave him the thousand dollars.

Q Who are you talking about? A I am talking about Mr. Brown, the defendant.

Q Mr. Brown is the defendant? A Yes.

Q Mr. Richardson is the broker? A Correct.

Q Had you met Mr. Richardson before you went to Brown's office? A When we came into town we called him and he took us to Brown's office.

Q Where is Brown's office? A In the Woodward Building, if I recall.

Q Who came to town on this visit? A Mr. O'Neill and myself.

Q Was Harry with you on that visit? A No, sir.

* * * *

57 Q When you called Richardson on the telephone before you went to his office, what was said, how did you introduce yourself? A I came in and told him I am Harry Rudberg's brother.

Q Is this over the 'phone? A Yes. I told him, I am Harry Rudberg's brother, and I would like to see him with reference to the liquor store.

We went to his office and I showed him a telegram I got from Harry.

Q Is this on the first visit? A No, this is the day—

* * * *

Q Did you show him the telegram on the first visit? A No, because I did not have the telegram yet.

Q What happened on the first visit? A On the first visit we came to put some money down so we could check over the books.

Q Will you tell the Court what was said in Richardson's office by you, Mr. O'Neill, Mr. Richardson;
58 give us the conversation before you went to Mr. Brown's office.

* * * *

59 BY MR. CANFIELD:

Q Now this is the occasion when you and Mr. O'Neill first came down.

I understand you called Mr. Richardson the broker?
A Yes.

Q You hadn't met him before that? A That is right.

* * * *

Q Tell what was said by any of you, or all of you in Mr. Richardson's office.

* * * *

60 Q Yes. Who was present? A Mr. O'Neill and myself. We entered Mr. Richardson's office, and Mr. Richardson was there. He is in some small office in the street, I do not know the street but it was a very small office; when I came in there with him we explained to Mr. Richardson that the way it appears Harry is sort of being left out or let down gradually by Mr. Selis, because he told him in a week he would be home and then it was extended for another week; so I explained to Mr. Richardson now that both of us are going in with Harry; if Harry will be successful in having Mr. Selis go in with him, all right, if not, why, we are right here to take over.

So he called up Mr. Brown—

* * * *

A Oh, Mr. Richardson said, I do not know whether a thousand dollars will be enough because Mr.
61 Brown wants \$5,000; so Mr. Richardson said, "We will go up and see what we can do with giving him a thousand dollars."

Q At that time did you have an extra thousand with you? A Yes.

Q For what purpose? A To put down in addition, to making, to make the deal.

Q Did Mr. Richardson call Mr. Brown? A Yes, he called him.

Q As a result of that call, what happened? A He made an appointment in Mr. Brown's office.

Q In the Woodward Building? A Yes, sir.

Q Who went to fill the appointment? A Mr. Richardson went with Mr. O'Neill and myself, and Mr. Brown was present. That is all that was there.

Q Can you fix the approximate time of the month? A I do not remember exactly, but I would say it was about the end of July, or the beginning of August.

Q All right. Now, what happened in Mr. Brown's office? A In Mr. Brown's office, the question arose about the money we were to put up; where Mr. Brown wanted \$5,000 and we had Mr. Richardson to see what he
62 could do with Mr. Brown about the thousand dollars, to accept it.

Q You mean the extra thousand? A The extra thousand.

Q All right. A Mr. Brown says a thousand is not enough to tie up a big deal like that. Then when Mr. Richardson introduced me and Mr. O'Neill to Mr. Brown he told him where we were from.

Then Mr. Brown said these fellows are from out of town, they cannot qualify for a license, and he further said, You will have to form a corporation.

Q Who said that? A Mr. Brown. Then Mr. Richardson chimed in, he said, O. K. I will take care of that part of it; just get the deal tied up.

Q Had you authorized Mr. Richardson at that time to do anything to form a corporation? A That was the first time a corporation was mentioned.

Q Now, at that time, did you know that because you are a non-resident you could not qualify for a license? A I had no knowledge of that at all.

Q Was anything further said as to whether you were willing to form a corporation? A Nothing further was said about that.

63 Q Did you conclude the deal? A We tied up.

Q How? A We gave an extra thousand to close the deal, and Mr. Brown said, Well, I do not think it is a deal, but Mr. Brown said, I will give you my word until the fellows come back with the balance of the money to total the \$5,000.

Q Now, as a matter of fact, didn't you give an extra thousand at that time, or did you take it back? A We took it back. He would not take it.

Q Mr. Brown would not take it. A He would not take it.

Q Was anything said at that time about a dead line to complete the transaction? A When we left he gave a dead line, I would say a week or ten days or something like that, I do not recall.

* * * *

64 Q Now, what was the next thing that occurred as to this transaction? A The next thing for us to do was to come back with \$4,000.

Q State whether or not you had any further conversation with Harry after this interview in Mr. Brown's office. A Well, first he sent a telegram, telling me Mr. Selis is out, the war is over and that is the end of it.

Q Then what happened? A Mr. Richardson had called Mr. O'Neill on the 'phone and he telephoned me the same day and we told Richardson we would be down. It happened to be V-J Day that was set to conclude the balance of the money to come down with that \$4,000, and then when Mr. Richardson told Mr. Brown that the banks were closed, he said it was a lie.

Q Who told you this? A Mr. Richardson. He said it is a lie, the banks are only closed one day, not two days. He asked us to come down with cash, no checks. So we told him the banks are closed today and tomorrow also.

Q How are the banks closed, by what authority? A By proclamation of the Governor. He asked us for
65 a letter to that effect.

Q Who asked for that? A Mr. Richardson.

Q For what purpose? A To prove to Mr. Brown that he is not stalling him around for the extra two days that we needed, on account of the banks being closed.

Q Now, did there come a time when you did something with reference to the balance of the money? A Then when the holiday was over, the next day when the banks opened up, Mr. O'Neill and myself walked into the bank and got two cashier's checks, I got \$2,000 in Cashier's Checks and Mr. O'Neill got a \$1,000 cashier's check.

* * * *

Q On that day you got your cashiers' checks from the banks, what did you do, if anything? A He wanted us to come here at 11 o'clock, we told him the banks
66 are opened at 9, we cannot leave before the banks are opened; so he would extend it from 11 to 3 o'clock.

Q Meaning the day of the 17th? A Yes, sir.

Q I hand you a piece of paper. See if you can identify that paper. A This is the letter I got from the Cashier of the Merchants' Bank.

Q This is the letter you got at Mr. Richardson's request? A That is correct.

(The document referred to is marked "Plaintiffs' Exhibit No. 3" for identification.)

MR. SHINBERG: No objection.

MR. CANFIELD: I offer it in evidence at this time, Your Honor.

THE COURT: That is No. 3. It will be received.

(The document previously marked "Plaintiffs' Exhibit No. 3" for identification is received in evidence as "Plaintiffs' Exhibit No. 3.")

MR. CANFIELD (reading):

"August 17, 1945.

"To Whom It May Concern:

67 "At the request of Mr. Rudberg, we state that the banks in Shenandoah, Pennsylvania observed the two-day holiday on Wednesday, August 15th and Thursday, August 16th.

"Sincerely yours,

"P. C. Naylor, Cashier".

BY MR. CANFIELD:

Q Who is P. C. Naylor? A The cashier of the bank.

* * * *

Q Did you come to town with Mr. O'Neill on August 17th? A Yes.

Q What happened, first? A On the 17th when we came to town we called Mr. Richardson and told him we

would be over at his office. When we got over to his office he called Mr. Brown—

Q Before he called Mr. Brown did you have a conversation with him as to your brother Harry? A I explained Mr. Harry is out of it now.

MR. SHINBERG: Excuse me. Are you now talking about the last day?

THE WITNESS: The 17th. When I came in town with the \$4,000 after the bank holiday.

BY MR. CANFIELD:

Q You say you explained that to Mr. Richardson?

A That is correct.

68 Q Did you exhibit anything to Mr. Richardson?

A I showed him the telegram I had received from Harry.

Q I show you Plaintiffs' Exhibit No. 2, and ask you if that is the telegram you showed to Mr. Richardson?

A That is correct?

Q After you showed that to Mr. Richardson, what did he say or do in regard to that, if anything? A He said I will take care of the appointment now to get the men together.

He said he would have to call Abrams, I think was the attorney for Mr. Brown.

Q Up to this time, had you met Morris Abrams, the lawyer? A Never met him but I remember he said he would have to go into his office and would call Mr. Brown.

Q Did he make the appointment with Mr. Abrams? A He did.

Q What time was that set for? A 3 p. m.

Q Did you go to Mr. Abrams' office? A Yes, sir.

Q Who took you there, if anybody? A Mr. Richardson took us to the office.

69 Q Do you remember what building that is? A No, I do not recall.

Q When you went to Mr. Abrams' office, who was present? A Mr. Abrams was out on some business

and we had to wait for him. Mr. Brown was there. But Mr. O'Neill and myself were taken down there in Mr. Richardson's car.

Q Well, was Mr. Richardson there when Mr. Abrams came in? A Well, we were all together, the three of us.

Q Well, he was there? A Yes.

Q Did there come a time that Mr. Abrams came in?

A Yes.

Q Was Mr. Brown present? A He was present.

Q Tell us what transpired at that time in Mr. Abrams' office? A As soon as Mr. Abrams came in, he introduced us and immediately Mr. Abrams said, "You are lucky fellows", because yesterday he had an offer of \$5,000 more for this liquor store. And then he went over to another room or desk and got out a paper like this (indicating).

Q You mean a jacket like this (indicating)? A Yes, a folder similar to that.

Q And from that you say he removed the paper?

70 A Yes, he removed a paper.

Q What kind of a paper? A Well, he had a paper in some sort of a folder.

Q And from that you say he removed a paper? A Yes, sir.

Q What happened, do you remember? A Well, he asked, What is the amount of money, asked us our names, and had a girl there take it down; then he proceeded to draw the thing up.

Q Well, now, did there come a time when a paper was tendered to you for signature? A Yes, when the paper was all typewritten, it was given to Mr. Brown to sign.

Q You did not see this happen, you do not know where it was typed?

The paper that was ultimately signed, you did not see it typed up? A No, we did not see it typed up. The dictating was in the presence of a girl there.

Q Then what happened? A Then when she was all

done the papers were brought in and we were handed a copy, and they asked us to read it, and we did so. I recall now that Mr. Abrams said, How is this going to be handled?

71 So Mr. Brown says a corporation. But Richardson says, I will take care of how it is going to be handled.

Q Now, was there any conversation between Mr. Abrams and Mr. Brown? A They were in conference in the other end of the room there, but Mr. Abrams then came back with a reply that he did not like the corporation; due to the fact of the notes and the rent lease Mr. Brown is on; that he does not like a corporation at all.

Then, of course, Mr. Richardson said when we get this other agreement concluded—it was only temporary, just to tie it up, then we will take care of that.

Q What did you understand that to mean? A Well, Richardson said, Just get it tied up and “I will get it straightened out”, he said, “I have an attorney who handles cases of this kind, and is very familiar and has secured licenses where other attorneys have failed.

He mentioned Levin, who was formerly in an office with him.

Q Did you sign this? A We all signed it.

Q At the time you signed it was anything said about this being a completed instrument? A Oh, yes; it was just to tie it up. Richardson said, let's get it tied
72 up and we will take care of the rest of it.

Q Now, at that time was anything said about the identities of the parties? A What do you mean by identities?

Q As to who was to own the business? A That was made clear because we explained that to Mr. Richardson and the attorneys, who were going to be the partners.

Q You mean you and O'Neill? A Yes, we showed him the telegrams showing Harry was all finished, and we said we could not count on him any more.

Q Then what happened? A Then after we left the office we went down in the elevator, and Mr. Richardson said, While you fellows were there in the office I stepped out and called Mr. Levin, and I made an appointment for you and Mr. O'Neill to go over and get the different details that will be necessary so you will not lose any time.

Q When you were in Mr. Abrams' office was the name of Mr. Canfield mentioned? A Yes, it was.

Q How did that come about? A Mr. Abrams, 73 the attorney said, You should have an attorney here to represent you. So we said we tried to get in touch with Mr. Canfield, but he was out of town.

Q Was anything said about my being from your home town? A Yes. We mentioned you were from our home town and we would like to have you handle it.

Q What was said in response to that? A Mr. Richardson replied he was going to take care of the rest of it.

Q Of the details? A Of the details, whatever was necessary.

Q Was the agreement discussed at all? A That was made just to tie up.

* * * *

A That was only a temporary agreement until Mr. 74 Canfield comes back, to tie this thing up; that was the agreement that was made when we paid the \$4,000.

Q Now, to get back to the conversation with Mr. Richardson when you left the building, what was said about your going to Mr. Levin's office? A Mr. O'Neill said he was not interested in seeing any attorney in town; he was going to wait for Mr. Canfield to come back. So on the way out while we were driving, I said I have nothing to lose, I will go up and see Mr. Levin.

The office was closed around 5 and he was waiting an hour, Mr. Richardson said, so I thought there was no harm in going off.

Q Did Mr. O'Neill go with you? A No, he stayed at the hotel.

Q What did Mr. O'Neill say, if anything? A He said he was not interested in going up because he is going to have Mr. Canfield take care of the conditions of the deal and whatever details are necessary.

Q Did you go up to Mr. Levin's office? A I went up to Mr. Levin's office; yes, sir.

MR. CANFIELD: Now, I think I might state to the Court that Mr. Levin is now deceased and we are unable, of course, to produce him, as a witness. It may be that the conversation that Mr. Levin had—the conversation at Mr. Levin's office would be competent—

75 MR. SHINBERG: I have no objection to the conversation there at Mr. Levin's office.

BY MR. CANFIELD:

Q What took place in Mr. Levin's office? A He said, "I guess you are the man Mr. Richardson called up about?"

I said, Yes, I explained we had just put money down on the liquor store. He said, Well, there are a couple of ways to handle this, you can either form a corporation or you can get someone else's name for a year, and then it will be transferred back.

I said, That does not sound legal to me. He said, Well, I tell you I have secured licenses for other fellows in town that could not get them, so do not worry; I will take care of it.

So, when I came back to the hotel I told Mr. O'Neill that he tells me there are two ways, you can put it in some one else's name for a year, and then you can transfer it back.

He said, Oh, no; that is no good. I am not going to be a party to anything like that. So, I do not like it, either, I said. So, I said all right, we will wait until Austin comes back.

Q Meaning me? A Yes. I know you so well. And we will have him take care of it.

76 And that was the end of it.

Q Then did there come a time when you saw me? A When you got back from your vacation, you called up and made an appointment.

Q Did you come to Washington? A We then came to Washington, Mr. O'Neill and myself.

Q You need not give the conversation that took place in my office. As a result of the conversation, what did I do?

* * * *

THE WITNESS: You looked this over. You said, "Fellows, you cannot qualify for a license, and besides, if any one tries to do anything with you fellows and draw anything up with the questions you have to answer on this liquor license, not only will you fellows be involved, but the attorney will go to jail if he tries anything like that."

Then you called Mr. Schwartz on the 'phone and you thought you would get him for this application. I think he came up to your office— That is right he did.

BY MR. CANFIELD:

* * * *

77 Q Now, did Mr. Schwartz prepare any papers for you? A He prepared an application for a liquor license and he started to ask questions and we answered, then he came to a paragraph for us to answer, "Are you the legal owners of this liquor store?" Something to that effect, and of course we could not answer it, because we were from out of town, and we told him that we could not sign a thing like that.

Q Did he prepare a series of papers for you? A Yes, he did.

Q I hand you these papers, and ask you if those are the papers? A Yes.

Q Are those your signatures? A Yes, sir.

Q Is that Mr. O'Neill's signature? A Yes, they gave them to me and then to him.

Q Now, did Mr. Schwartz do anything while you were there with reference to these applications? A After he was working on it a little while, he said he would call up one of the liquor officials up there to get some information, and they told him it is no use to bring an
78 application like that in, because it is worthless as long as you say these two fellows are from out of town.

Q Did you hear him make that call? A Yes, that was in our presence.

Q Was that to the Alcohol Beverage Control Board? A Yes.

Q Now after that was this application filed, so far as you know? A I cannot say but I know he called them and they stopped him from going ahead.

Q Then through me did you make a demand for the return of the money in this case? A That is correct; yes, sir.

Q Has the money been returned? A No.

Q Has it ever been tendered to you? A No, sir.

Q Had you ever lived in the District of Columbia? A No, sir.

Q Had you ever worked here for any time prior to the time you came to visit? A No, sir.

Q Had you ever had a liquor store or any interest in a liquor store in the District of Columbia? A No, sir.

MR. CANFIELD: Take the witness.

* * * *

79 MR. CANFIELD: May it please the Court, I offer the original agreement as to that— Miss Burroughs, it has not been marked; that is Plaintiffs No. 9, a series of papers marked Plaintiffs' 4, 5, 6, 7 and 8, being the official forms used by the Government of the District of Columbia by the ABC Board under the Act approved January 24, 1934, as amended.

(The documents referred to were marked "Plaintiffs' Exhibits 4, 5, 6, 7, 8 and 9" are marked for identification.)

MR. CANFIELD: I might have him identify the signature.

BY MR. CANFIELD:

Q I hand you Plaintiffs' Exhibit No. 9 and ask you if that is your signature? A Yes.

80 Q And is that Mr. O'Neill's signature? A Yes, sir.

Q Did you see him sign it? A Yes, sir.

Q Did you see Mr. Brown sign it? A Yes, sir.

Q Did you see Mr. Richardson sign it? A Yes, sir.

MR. CANFIELD: I offer them in evidence.

THE COURT: Received without objection.

(The documents referred to previously identified as "Plaintiffs' Exhibits 4, 5, 6, 7, 8 and 9" are received in evidence.)

Cross Examination

BY MR. SHINBERG:

Q You testified on the occasion of your last visit you brought a certified check for \$2,000 and Mr. O'Neill brought a certified check for \$2,000. That was respectively your money and his money? A Yes, sir.

Q And together with the thousand dollars that had been put up by your brother Harry on a preceding occasion, that made the \$5,000 that Mr. Brown had always insisted on being put up? A Yes, sir.

Q Whose money was that thousand dollars? A My thousand that I had sent to Harry.

Q Harry had not put up any money of his own?
81 A No, I gave him that thousand dollars previously, when he had wanted it to go down to put the thousand up.

Q At that time it was your understanding that Harry was going to go into business in Washington; is that correct? A Yes, sir.

Q You did not intend to go into this negotiation at all?

A Nothing more than to lend him money to help
82 him out.

* * * *

Q Now, how much money did you expect to have to loan to Harry? A I do not know exactly because Harry did not know himself, what was going to happen with Selis, so everything was sort of in the air.

Q In other words, your place in the picture at that time depended largely on what Mr. Selis was willing to do. Right? A Well, I was not in the picture at all, it was merely a case of helping carry out.

Q Well, if Mr. Selis did not come through, you intended to take up the slack? A Well, how much I could eventually help him out, I did not know.

Q Did you know how much Harry had? A Yes, I had.

Q How much did he have? A He had about
83 \$15,000.

Q That was his own money that he could use?
A Yes.

Q I take it, if Harry could get all the rest of the money he needed from Selis, you were going to lend him the money? A That is right.

Q At that time Mr. O'Neill was not in the picture? A That is right.

Q And this was prior to the time you loaned him the thousand dollars? A That is right.

Q Now, at the time you loaned him the \$5,000, that is the time you determined to go in on your own account? A That is right, provided Mr. Selis was supposed to come back and he did not come back, so I happened to talk to Mr. O'Neill on a trip to Philadelphia, a business deal, I figured if Mr. O'Neill expressed interest, as long as he did express interest and not knowing what was going to

happen as to Selis, then I showed my interest, and I knew I could talk because I had Mr. O'Neill to go along with me.

* * * *

Q Harry was out of it, altogether? A Yes, sir.

84 Q And so were you and Mr. O'Neill? A No, we were going to go through with it. Selis didn't get back, and then the pressure was put on by Mr. Richardson, so then we thought that my brother and Mr. Selis could not get together, and we would handle it ourselves.

Q And you and Mr. O'Neill had sufficient money to handle the transaction? A That is right.

Q At that time, you already knew to some extent what the terms of the sale were? A Yes.

Q You knew they were going to require at least \$35,000 in cash for the good-will? A That is right.

* * * *

85 Q So you felt if Harry could not get assistance from Mr. Selis, you and O'Neill were going to take over this business? A That is right.

Q At that time you were engaged in business in Shenandoah? A That is correct.

Q What was Mr. O'Neill doing? A We were in business, but we were out of business.

Q That is not my question. What was Mr. O'Neill doing at that time?

MR. CANFIELD: Do you mean what was his business?

MR. SHINBERG: Yes.

THE WITNESS: In the insurance business. When you asked me if we were in business, we were in business, but we were out of business, because we had nothing there to sell during the duration, and I thought it would be to advantage to go into this. I do not know whether this has any bearing here or not, but I had contacted my father-in-law who could see it would be nice to venture into this thing.

At that time I was only married four years, so that is where all this serious consideration came into this.

BY MR. SHINBERG:

Q Did you expect to get some money from your father-in-law? A Oh, yes.

86 Q So, when you said you and Mr. O'Neill were going to handle this, you meant you and someone else? A Well, as far as someone else, for my shortage I needed about \$4,000 or \$5,000.

Q When you say your "shortage," what do you mean by that? A To take care of the entire amount that was involved.

Q How were you going to divide up the amounts, were you to contribute equally? A Equally.

Q You each had to contribute \$17,500? A That is right.

Q And you were only short \$4,000 or \$5,000 of that figure? A Yes, sir.

Q Did Mr. O'Neill have all of that money? A As far as I know, he did.

Q How long had Mr. O'Neill been engaged in the insurance business in Shenandoah? A I would say about 20 years.

Q So it was your intention for you and Mr. O'Neill to come to Washington and go into the liquor business? A That is correct.

* * * *

88 Q Well, at the time you gave Harry the thousand dollars—

89 A Oh, at the time I gave Harry the thousand dollars, we were then straightened out as to the fact that Harry cannot get any place with Selis and it is finished business.

Q Well, you did not know that to be certain at that time, did you? A I was not certain, that is correct.

* * * *

Q So, when you gave him the thousand dollars you were not certain you were going to leave Shenandoah altogether?

A We were not certain of anything. And Richardson kept calling on the 'phone and said you are going to lose the deal, so then I spoke to Mr. O'Neill about it, and he says, it sounds all right to me.

* * * *

90 Q Did it ever occur to you at that time that there
might be such a thing as a residence requirement
91 to go into the liquor business? A No, sir.

Q How long have you been in electrical appliance business? A 12 or 15 years.

Q How old are you? A 42.

Q You have had considerable business experience then?
A Yes, sir.

Q Now, you testified before that when you and Mr. O'Neill came down you contacted Mr. Richardson? A Yes, that is right.

Q That is the first time you saw Mr. Richardson? A Yes.

Q Now, on that occasion, was there any conversation between you or Mr. O'Neill and Mr. Richardson concerning the requirements of the District of Columbia Liquor License Law? A No discussion.

Q None whatsoever? A No discussion.

* * * *

92 Q When he had talked on the telephone with
Richardson, you knew that, did you not; they had
talked many times prior to that? A Oh, yes.

* * * *

Q Now you testified that Mr. Brown told you for the first time, to your knowledge, that you could not buy that store in your own name? A That is correct. And then Mr. Richardson said to Mr. Brown he would take care of it.

Q You did not hear any particular conversation at that time between Mr. Brown and Mr. Richardson? A Well, that was in our presence.

Q At that time you knew that you and Mr. O'Neill also were not eligible to hold a liquor license in the District of Columbia in your own name? A Well, I did not know how, but Mr. Richardson said he would take care of that. As far as how it would be handled, I did not know. But I knew Mr. Richardson had mentioned he would take care of that.

93 Q But you knew it required something in the nature of taking care of, didn't you? A No, sir; I did not know what he meant.

Q Did you ask him what he meant? A Well, that was the end of it, he wanted to tie up the deal.

Q Did you want to tie up the deal? A We wanted to tie up the deal. Mr. Brown said, "You will have to form a corporation." Then Mr. Richardson came back and said he would take care of that part of it, just get the deal tied up.

I did not know what was what.

Q Well, you knew Mr. Richardson was only the broker in the case? A Well, he was representing us. (sic) He said, I will take care of you.

Q And you were willing to let him take care of you, were you not? A Yes, sir, because we had confidence in him that he would take care of us.

Q Now, at that time you knew about Mr. Canfield's being in the District of Columbia? A Yes, sir.

Q And you knew Mr. Canfield was a lawyer of high reputation and high standing at our bar, didn't you?

94 A Yes, sir.

Q On that occasion you did not even attempt to get in touch with Mr. Canfield, did you? A Well, this was only to tie it up. Mr. Richardson said, "Get it tied up, and I know an attorney who has gotten licenses where other attorneys have failed;" so I just thought it was an ordinary procedure which was a legal way to handle it.

Q Well, you knew in detail there was \$75,000 of your money involved, and Mr. O'Neill's money involved, didn't you? A Yes.

Q And just what do you mean, Mr. Rudberg, when you say just to tie it up? What do you mean by that? A Well, Mr. Brown was after Richardson that if we do not put the money down in a certain time we are going to lose out.

Q That was because he had other people who were interested? A That is correct.

* * * *

95 A Number of days, I cannot tell how long.

Q Well, you knew Mr. Brown had several persons who were interested in buying a liquor store at that time? A Mr. Richardson told us that.

Q Well, when you met Mr. Brown for the first time, did you get the impression that he was anxious to close the deal? A No, sir.

Q Did you get the impression that he was tired of waiting on you boys to tie up the deal? A Well, I do not know whether he was tired. Mr. Richardson had told us, "We will lose out if we do not put this money down."

Q Now, will you explain just what you mean, "just tie it down"? A Well, the \$4,000 had to be put down on the insistence of Mr. Brown before he would let us see the books, by putting this money down it would give us the privilege of seeing the books, and we felt it was not necessary to call any attorney at the time. He said he could not show the business to anybody unless they meant business by putting money down.

* * * *

96 Q Now, Mr. Rudberg, I think you just told us that Mr. Brown didn't want you to see his books and records unless you put up the \$5,000? A That is correct.

Q Now, do I understand from that that you were willing to pay \$5,000 just to see his books and records? A He

said, You can see the books but you cannot see them until you put the money down.

Q Well, what did you understand that to mean? Did you understand it to mean that it would cost you \$5,000 to see the books, that thereafter, if you were not satisfied with them you could take back your \$5,000? A No we told him we wanted to see the books before we would give him any more money.

Q That is the reason you brought the accountant down?

A We brought the accountant down and it was in accordance with Mr. Brown's figures.

Q In other words, what he told you was correct? A Yes, sir.

* * * *

97 Q Did you understand that to mean that was to be a binding agreement, or didn't you understand that to be a binding agreement? Let us forget about Mr. Richardson. What I want is what you thought it meant. A It is not what I thought. It was a temporary agreement.

Q Well, wasn't it your plan at that time to tie this up so that Mr. Brown would have to sell you that liquor store?

A That is correct. There were things to be done. We had to wait for Mr. Canfield to take care of them for us.

Q Well, you knew, did you not, Mr. Rudberg, when you signed the contract it was not just tying it up, and you were not only binding Mr. Brown to sell you that store, but you were binding yourself to buy it? You understood that?

A Yes, that is correct.

Q You never did see Mr. Levin prior to the date the contract was signed, did you? A No, sir.

98 Q But you knew that your brother Harry had talked to him? A I did not know that.

Q Didn't you know your brother Harry had met Mr. Levin, had met him on a previous occasion? A I did not know that.

Q And you considered using Mr. Levin for the purpose of finishing up this deal, did you not? A No.

Q Why did you go to see him? A Mr. Richardson had called him to make the appointment and, as long as there was time before the train time, I thought I would go up to see him.

Q You mean, just to get a little free legal advice? A No, Mr. Richardson insisted I go up and see him.

Q Well, you knew at that time did you not, that if any lawyer was going to represent you in that case, it would be Mr. Canfield? A Yes, sir.

Q So your visit to Mr. Levin was for no purpose at all? A It was just to please Mr. Richardson. I went up there to see what was what.

* * * *

99 Q I say, you knew you were going to need the assistance of Mr. Canfield or some lawyer to take care of the liquor license? Didn't you? A That is correct.

Q Because you knew that you and Mr. O'Neill could not get the liquor license in your own name? A That is correct,—I would not say that was correct. I knew we were going to see Mr. Austin—

Q Well, you knew you and Mr. O'Neill could not get a liquor license in your name? A We did not know how it would be handled.

Q Didn't he say something about a corporation? A He mentioned about a corporation and we told him on account of the tax angle we would not be interested in a corporation.

Q Did he tell you any other—Did he tell you any other means? A Richardson said he would take us to a man who would handle it.

Q But he did not tell you what he was going to do? A No.

Q And all this was prior to the time the contract
100 was signed.

Mr. Brown told you you could not get a license in your own name, didn't he? A That is the first time

anything was discussed about a corporation. That was when we brought our money down.

Q That is what I am talking about? A That is correct. Mr. Brown told us you being from out of town, you could not get a license. Mr. Richardson said he would take care of that, this \$4,000 was only to tie it up.

Q And you knew it would tie up for all parties concerned? A That is correct.

Q But you did not know just what he meant? A He said you can depend on that, I have a man who will handle it.

Q And you depended on that? A We depended on that because he was the one calling us back and forth to make these appointments.

Q That was prior to August 17? A That was the day that we put the \$4,000 down.

Q Is that the day you signed the contract? A Was that the day we signed the contract?

Q Yes.

* * * *

101 Q You put up an additional \$4,000 and you do not know when it was? A You mean about this discussion of the corporation?

Q That is right. A Well, I told you before we discussed that—We did not discuss it but Mr. Abrams mentioned he did not like the idea of a corporation when Mr. Brown said it will be a corporation.

* * * *

102 Q I say, is it not a fact that Mr. Brown was not satisfied to have only a corporation on these notes? A Well, he did not say how. A corporation, he said he thought would be advisable but Mr. Abrams said he did not like a corporation.

THE COURT: Who are you speaking of now?

THE WITNESS: Mr. Abrams.

* * * *

104 Q Did you not tell us before that Mr. Brown told you that as non-residents you could not get a liquor license in the District of Columbia? A Now that you refresh my recollection, I recall now that Mr. Brown had mentioned that "you fellows are from out of town," and Mr. Richardson said that is O. K., I will take care of that.

Q And that happened at Mr. Brown's office in the Woodward Building on the occasion prior to the
105 17th? A I do not recall whether it happened on that occasion, or when we gave the other.

I do not know just when that took place—I do not recall where that took place.

THE COURT: When did it take place?

THE WITNESS: Well, it either took place at the time we gave the four or at the time he wanted more money.

THE COURT: He wanted you to think about it. Tell us which time it was.

* * * *

Q Now, after you had your conversation with Mr. Levin, subsequent to the signing of the contract,
106 how long was it before you got in to see Mr. Canfield? A I do not know how long it was, but I know we had called, and he was away on vacation.

We left a message—

* * * *

Q Well, you knew there was something else that had to be done after the contract was signed about the liquor license? A Well, not about anything in particular. I think—you mentioned about the liquor license. There were so many things, such as the lease and the notes.

We did not single anything out like you are singling out these things.

Q Well, now with the exception of the lease for which Mr. Brown had to obtain the consent of the owner, what other contingencies remained to be fulfilled under this contract? A Well, I do not recall the details of what

was involved, but I knew that we had to have an attorney to represent us to get this second contract or agreement made.
107

Q Second contract or agreement? A Well, it was not finished, it was just temporary, just to tie up the deal. So then we thought we will get our attorney to finish up whatever deal has to be concluded or finished.

Q What did you understand had to be done to finish the deal? A Well, there was a lease involved, the transfer of the license, and I think the notes.

Q Weren't the notes covered in the contract? A I know, but we felt we should have an attorney who would represent us about these notes.

We did not want that to be handled by ourselves, and as long as it was tied up, like Richardson told us, just get it tied up, we felt we needed a lawyer.

Q I am reading from this contract, Plaintiffs' Exhibit 9, which you say you signed (reading):

"The balance of the total purchase price shall be paid at the rate of \$2,000 a month, plus interest at the rate of 6 per cent per annum, and shall be evidenced by a promissory note secured by chattel deed of trust on the assets hereby sold. The notes shall contain a provision giving the makers the option of paying a larger sum in any amount at any time."

Do you remember that? A Yes.

108 Q Now, you knew exactly what that meant, did you not? A I know what it meant, but I still had need of an attorney. When a lease is made, you have to have an attorney there to see that everything is right.

When a lease on a store is made, and when notes are being typewritten up and other things that were hanging, Mr. Richardson said as long as you have it tied up, then you can go into the other thing.

Q You knew that under this contract there was no new lease to be obtained, did you not? A Sir?

Q In and under this contract, the seller, Mr. Brown,

was going to obtain a transfer, you knew that, did you not?
 A Yes, but we felt we had to have an attorney to look it over. Mr. Richardson said, As long as you tie it up, fellows, that is all that is necessary.

Q Now, let me ask you this question: As long as you had tied it up, if Mr. Brown had changed his mind, you would have considered that he was violating his contract, would you not?

MR. CANFIELD: Objection, if Your Honor please. I think that is argumentative.

THE COURT: Sustained.

109 BY MR. SHINBERG:

Q Mr. Abrams told you prior to the time that you signed this contract that you ought to go out and get counsel for yourselves, didn't he? A Yes, sir. He thought it would be advisable.

Q But you still went ahead and signed this contract without it? A Mr. Richardson said as long as you tie it up, that is all that is necessary.

Q Now, you read this contract before you signed it? A Yes, sir.

Q You know what is in it? A Correct.

Q And you knew at that time that you and Mr. O'Neill individually could not obtain the license in your own name? A No, sir.

Q Well, didn't Mr. Brown tell you that previously in the Woodward Building? A He told me we could not obtain a license in our own name, but I did not know we could not get a license in a legal way.

Q Well, you knew when you signed this contract that you and Mr. O'Neill could not obtain a liquor license in your own name? A Correct.

* * * *

110 Q Now, is there anything in this contract which says anything about forming a corporation? A As

far as I remember, there is nothing in here about a corporation.

Q Nothing in there? A It has been so long—

Q Well, read it over.

THE COURT: I suppose the instrument will answer your question.

MR. CANFIELD: We can save time by conceding that there is nothing in there.

MR. SHINBERG: I do, too. I want him to concede it.

THE WITNESS: Well, there is nothing in here that says anything about a corporation.

BY MR. SHINBERG:

Q But there had been a discussion on a previous occasion that Mr. Brown had told you that the only way for you to get a license was to form a corporation. A He said a corporation would be advisable. He did not say that was the only way.

THE COURT: Who said that?

MR. CANFIELD: Mr. Brown.

* * * *

BY MR. SHINBERG:

Q You mean Mr. Brown? A Yes.

111 Q And yet this contract says nothing about the formation of a corporation or any other method of obtaining a transfer of liquor license, and despite the fact that you knew you and Mr. O'Neill could not obtain one in the District as individuals, you signed this contract as individuals? A That is right.

Q Why did you do this? A Because it was only a temporary agreement to tie up the deal. Mr. Richardson said sign it, tie it up; then you can get your attorney.

Q And then the contract was he was going to form a corporation, or do whatever was necessary for you to

get a liquor license; is not that right? A No, it is not right.

Q What is wrong about it? A When we went down to—when we went down in the elevator, he said, I have a fellow who knows all about the details; he has secured licenses where other fellows have failed. I said I would like to get our own man. Well, he said I have made an appointment. I said to Mr. O'Neill, How about going up? He said no, we will get all the details
112 when we get our attorney, Mr. Canfield.

Q Well, you knew you and Mr. O'Neill could not sign an application to get a license in your own names? A We did not know what style it was going to be done in.

Q I am asking you now this question: You knew after signing this agreement in your own names, you knew you could not file an application in your own name to get a license? A I did not know it until we went down in the elevator.

Q Didn't you know it on that previous occasion when Mr. Brown told you? A But Mr. Richardson told us you can get it.

Q But it required something else to be done? Such as forming a corporation, is not that right? A That is correct.

Q So you knew when you and Mr. O'Neill signed this contract that you were going to have to do something other than apply for it in your own name? A That is right.

Q And that is the reason you were going to employ counsel to do that. A Well, whatever was necessary.

There were other things involved there, and that was
113 no outstanding item at all.

Q That was one of the most important items, was it not? A Not the way Richardson spoke, it was not important.

Q Well, you knew if you could not get a license, you

were throwing away \$75,000, did you not? A No, sir. I felt that Mr. Richardson was steering us right and he said you can have confidence in me, that everything will be all right, because Mr. Levin is a fellow he will take us to, and everything can be handled in a right way.

Q And by that you understood him to mean that in some way you were going to get a liquor license? A That is correct.

Q So if you did not get a liquor license, you would be throwing away \$75,000. Is not that right? A Well, I would not say that, because we had confidence. When he said, You will have to use someone else's name, we thought \$4,000 was only to tie the deal; you can rest assured when Mr. O'Neill told me, "I am not going to put down my money in someone else's name," I told him I do not like it, either.

* * * *

114 A That is correct. We put the \$4,000 down to tie it up, it was only temporary.

115 It could not go that far ahead because it was a temporary agreement.

Q When you say "temporary," you imply there was something else that had to be done to make it permanent, is that right? A It was just put down to tie up the deal.

Q Well, when you say you wanted to tie this up, it was a temporary arrangement, you expected something else had to take place to make it permanent? A That is correct.

Q And that was the question of your obtaining the liquor license, was it not? A No, sir.

Q Well, what was it? A It was everything in general, the notes on the agreement.

Q That is covered by the contract, is it not? A But the notes were not attached to it, neither was the lease on the building that we were going to take, so all those things are mentioned, the transfer of the license, the lease, the notes, and all of those things.

Q The only other contingency is the transfer of the lease, is it not? A I would say from my memory, the notes, the lease on the place, and the license.

116 Q Did the notes contain any elements of contingency? A Not contingency. It was papers that we needed a lawyer to take care of.

BY MR. SHINBERG:

Q Mr. Rudberg, I again ask you whether there was anything in this contract which contained any contingency or the happenings of any new events other than the transfer of the lease, and the transfer of the liquor license?

MR. CANFIELD: I think the instrument speaks for itself, if the Court please.

THE COURT. Objection sustained.

BY MR. SHINBERG:

Q Now, Mr. Rudberg, after you finished talking with Mr. Levin, there was some doubt in your mind as to whether you had done the right thing, or not in signing this contract? A I did not like the idea when he said, You will have to put someone else's name here,
117 and then it will revert back to us.

Q And as far as the corporation was concerned, Mr. O'Neill wasn't very partial to that idea? A Yes, that is correct.

Q You didn't contact Mr. Brown and tell him anything about that, did you? A No.

Q As a matter of fact, you waited some three weeks or a month before you made it known to Mr. Brown that you were dissatisfied with this transaction. Is not that so? A I do not remember how soon after it was.

* * * *

119 Q Didn't you testify before that Mr. Abrams told you, you should have counsel of your own choice? A That is correct.

Q And you told him you did not think it was necessary?

A Well, it was only an occasion—

THE COURT: What was said?

THE WITNESS: Well, we had to wait there to get this tied up—

BY MR. SHINBERG:

Q That is not responsive. When Mr. Abrams told you that you should go out and get counsel of your own choice, you told Mr. Abrams that that was not necessary. Right? A I do not recall. I am just trying to recall. It has been so long.

THE COURT: You may think about it before answering.

THE WITNESS: Yes. It has been so long, I really do not remember.

* * * *

121 Q Well, did Mr. Abrams use any other paper when he was dictating the contract to his Secretary? A I do not know what he was using but he went over to another office and got one of those jacket folders, but from there on, I do not know what it was.

* * * *

122 Q Now, Mr. Rudberg, after you talked to Mr. Canfield, you decided that you did not want to go through with this deal; is not that right? A We did not decide anything at all. Mr. Canfield explained to us what was involved here, that we would have to fill this thing out, and he called Mr. Schwartz in, and when he called the Liquor Board, they said we were not eligible in a legal way, and I told him what Mr. Levin had told us about using a name, and we told him the whole story, and he said, That is not good; that is not legal.

Q In other words, to take title in some other person's name. Why didn't you form a corporation?

123 A Well, we really did not like that idea from the beginning or at no time, from the tax angle, we did not think that was the way to do it.

Q You did not think that was a good way to do it?

A No, we never liked that.

Q Did you discuss with Mr. Canfield the advisability of forming a corporation? A We hadn't seen that. When he read that thing he said legally it cannot get a license in town here.

Q Did you ask him whether legally you could get a license if you formed a corporation? A Well, I told him how this was going to be handled.

THE COURT: Answer his question.

BY MR. SHINBERG:

Q I asked you whether you asked Mr. Canfield or Mr. Schwartz whether legally you could get a license by forming a corporation? A We did not ask him that.

Q You did not ask him that? Yet, you had been told prior to that that by forming a corporation was one of the ways you could obtain a license in the District of Columbia? A Well, Mr. Richardson—

Q You are not answering my question. Read the question.

124 (Question read.)

A Yes, that was talked about, correct.

Q So that you knew that legally you could obtain a license by forming a corporation? A Yes, sir.

Q Yet, you did not ask Mr. Schwartz or Mr. Canfield about forming a corporation? A No, we did not.

Q And the reason is because you did not have enough money to go through with the sale; is not that right? A No.

Q Why did you not go through with the sale? A The reason is when we had to swear false on that application, then we did not feel as though we wanted to go into the thing illegally. That is why the thing stopped.

Q Is it not a fact, Mr. Rudberg, that the only reason
you did not want to form a corporation and go
125 through with that deal is because you felt you had
made a bad bargain and wanted to get out of it?

A No, sir.

Q You deny that? A Yes, sir.

* * * *

Redirect Examination

126 BY MR. CANFIELD:

Q Do you remember my reading the regulations
of the District of Columbia Alcohol Control Board?

A Yes.

Q State whether or not I read to you part of the pro-
visions of these regulations covering application for the
license? A Yes, you did.

Q Now, did I point out to you that Section 32 provided
that you could not get a license, or apply for one, if you had
not been a resident or gainfully employed in the District
for at least one year before filing application? A That is
correct.

Q Now, when you told me about the conversation in
Levin's office, what did I tell you about the necessity of
having a manager who would meet the qualifications?

A Well, you said the manager would have to live here for
a year, and he would have to be investigated and meet all
of the requirements involved here.

Q Now that you—Had you known that before I
127 told you that? A No, sir.

Q Or read these regulations to you? A No,
sir; that was the first I heard it.

Q Is it a fact that I read the pertinent regulations to
you and Mr. O'Neill? A Yes, sir.

MR. CANFIELD: That is all.

Recross Examination

BY MR. SHINBERG:

Q Mr. Rudberg, with reference to the question of a manager, isn't it a fact that Mr. Brown told you at the time he told you about the formation of a corporation, he told you it was necessary for you to have a manager in the District of Columbia? A No, sir.

Q Do you deny that? A I do not recall his saying that.

Q He might have said it, but you do not remember it? A I do not remember his mentioning anything about a manager.

Q Is it not a fact that Mr. Brown told you the man who was working in his store at the time could be used by you if you formed a corporation? A I do not recall that.

128 Q You do not remember? A I do not recall.

MR. SHINBERG: That is all, Your Honor.

MR. CANFIELD: Step down. Mr. O'Neill.

* * * *

Thomas F. O'Neill

Direct Examination

* * * *

Q Your name is Thomas F. O'Neill? A That is right.

Q Where do you live? A 24 North Jordan Street, Shenandoah, Pennsylvania.

* * * *

Q Were you every gainfully employed in the District of Columbia? A No, sir.

Q Did you ever own a liquor license or any interest in a liquor business in the District of Columbia? A No, or no place else.

129 Q Or any other place. A No.

Q What is your business? A General insurance.

Q How long have you been in that business? A About 15 or 16 years.

Q Prior to that what business were you in? A Men's clothing and furnishings.

* * * *

Q The insurance business is your own? A Yes, sir.

* * * *

Q Now you are acquainted with Mr. Rudberg? A I did business with the Rudberg family for a number of years.

Q I think you have known me a great many years?
A Yes, a long time.

* * * *

Q I am from your home town? A Yes, sir.

* * * *

130 Q Tell us where and when you first heard of it.
A I was driving from Philadelphia.

Q With Israel? A Yes. He told me about a deal Harry had contracted for in Washington, and of course, having three hours of a ride, he goes into a little detail about the transaction.

Q Now, can you fix the time of the year. A Well, I would not want to be held to it, but I imagine the last week in July or first of August, something like that.

Q Now, did there again come a time when you and Mr. Rudberg discussed this business after your return from Philadelphia? A Yes, we talked about it and I said that business looks pretty good, and he said he thought Harry was interested and might buy it with some financial help from his brother-in-law in Washington.

Q Did there come a time when Harry was unable to get the financial help? A Yes, Israel spoke to me again and

I said I would be satisfied to take a part of it because of conditions in the town I was in.

* * * *

131 Q Now, did there come a time when you definitely agreed to take an interest in the business? A That is right.

Q Did you know the terms and conditions of the sale? A Yes.

Q To some extent, or in detail? A I understood it was \$35,000 down, and dollar for dollar for the stock.

Q When was the first plan—What was your first plan? Were there two of you, or three of you to take the business?

A Well, first we talked about the business, Harry take a third, and Israel take a third. At that time it seemed Harry wanted it for himself, or not at all.

Q Now, did there come a time when you made a trip to Washington? A Yes.

Q Can you fix approximately the time? A I would say it was was a couple of days after this trip, around August 1st. It may have been the end of July.

* * * *

132 Q Had you any personal knowledge of the store prior to the time you made this trip? A No, sir.

Q Who accompanied you? A Israel Rudberg.

Q At the time you made this trip and—Had you learned that Harry had put up a thousand-dollar deposit at the time you made this trip? A He was not getting anywhere with his brother-in-law and Israel said, suppose he doesn't? Suppose we send Harry to Washington with a thousand dollars and if he did not go through with it, will you? I said, As a partner, yes.

Q Did you later send the thousand dollars to Washington? A He said I will send the thousand dollars to tie up the bargain.

Q Well, did you later learn that Harry had come down and put up the thousand dollars? A Yes.

* * * *

133 Q Who did you contact when you came to town?

A I went to the hotel, and to Mr. Richardson's office.

Q You and Israel? A That is right.

Q He was the broker? A That is right.

Q Tell the court what happened. A I introduced myself and so did Israel and told him that we are not sure of Harry, but we wanted to tie it up, as long as he would not take the thousand dollars we would give him an additional thousand dollars.

Q Did you have a thousand dollars with you? A We had a thousand dollars.

Q What happened as a result of that? A He called up Mr. Brown to get an appointment to meet Mr. Brown in his office.

Q Had you ever met Mr. Brown prior to that
134 time? A No. I passed the store and saw the man.

Q You had gone to the store to meet Mr. Richardson? A Yes.

Q Where did you meet Mr. Brown? A In Mr. Brown's office.

Q Where? A In the Woodward Building.

Q The same building my office is in? A I think that is the building.

Q Who was present at the conference? A Mr. Richardson, Mr. Brown, Mr. Rudberg and myself.

Q Was Harry Rudberg with you on that occasion?
A No.

Q Tell the Court what happened? Who said what?
A To the best of my knowledge the meeting was for the purpose of trying to tie up the bargain, so Mr. Brown decided that \$2,000 was not enough, he wanted \$5,000.

Q Had you made a tender of the extra thousand dollars? A Yes, and he went in a room and Mr. Richardson came back to us and said he would not take it; he wanted five thousand.

Q Now, did you have a further conversation in the

office at that time? A It seems to me that Mr.
 135 Brown made a remark— * * * Are you going to form
 a corporation—and Mr. Richardson said, we just
 came to meet the \$5,000 and I will take care of the other
 part.

Q Was anything said with reference to an inability on
 your part to qualify for a license? A Not at that time.

Q Was anything further said that day? A Not that
 I can recall.

Q Was anything further said as to a deadline? A dead-
 line on meeting the application for the business? A Yes,
 I answered that too quickly. Mr. Brown gave us a week or
 ten days more, or may be the following week to come back
 with \$5,000, more or less good faith, before he would allow
 any one to look over his books, more or less good faith
 before he would allow anyone to look over his books.

Q Was that discussed? A Yes. He wanted the five
 before he would allow the accountant to go out to his home
 and go over his books and his business.

Q Now did there come a time when he decided to come
 to town and dispose of the business? A Yes, that
 136 was V-J, I think; it may have been on the 15th, I am
 not sure, but due to the fact the banks were closed,
 we did not come until the 17th.

Q Do you know about Mr. Naylor's letter? A I knew
 that Mr. Rudberg went to the bank, also, Mr. Richardson
 told me he wanted me to bring the two letters down. I got
 one from my bank.

Q I show you a letter and ask you if you gave that to
 Mr. Richardson. A That I cannot answer, whether it
 was given to Mr. Richardson or at the office of Mr. Abrams.

Q I do not know whether I have your letter. I will
 have Mr. Schwartz look through the file. Now, did there
 come a time on the 17th when you drew money from your
 bank? A Yes.

Q How much did you draw? A I think it was \$2,000
 to make up the difference of the \$5,000.

Q And what time did you leave Shenandoah? A I would say close to 9:30.

Q When you came to Washington who, if anybody, did you see? A Went to Mr. Richardson's office.

Q Now prior to coming down on this occasion, did you know whether Harry was going to go through with
137 the deal? A I knew from his telegram that Harry was definitely out.

Q I hand you this telegram and ask you if you saw this.
A Yes.

Q Where? A He showed it to me on the way down in the car.

Q State whether or not you saw Israel give this telegram to Mr. Richardson? A Yes.

Q Where? A In Mr. Richardson's office.

Q And did you make known to him that Harry was no longer in the deal? A That was the idea of showing him the telegram, that he was definitely out.

Q What happened after that? A I think we went from there and telephoned to Mr. Brown, and whether he and Mr. Brown made an appointment with Mr. Abrams I do not—

Q Mr. Morris Abrams, is that it? A Yes, sir.

Q The lawyer? A Yes.

Q Had you known him prior to this time?
138 A No, sir.

Q Had you ever retained him or had Mr. Rudberg ever retained him? A No, sir.

* * * *

Q Now, when you got to Mr. Abrams' office, was he there? A No, sir.

Q Did there come a time when he came in? A A little later he came in.

Q What happened? A When he came in it was rather warm. Just when he took off his coat and hung it on the rack, I remembered his saying You fellows are lucky, I had called Mr. Brown yesterday and could have gotten \$5,000

more for the liquor store.

Q Then what happened? A There was no comment further. He went to his office, and then proceeded to draw up this instrument.

Q Was there any conversation? A First he said have you any counsel? I said the one man I know is on vacation.

139 Q How did you establish that? A I said Mr. Austin Canfield is from my home town and he would be my attorney.

He said we will proceed with this agreement.

Q Tell the Court then what happened. A He starts drawing the agreement, dictating it. I think the word "corporation"——

Q Who said that? A Mr. Abrams said to Mr. Brown, Mr. Brown's attorney advised him against the corporation, due to the fact of the lease which had four years to go, and involved maybe \$25,000, and the payments on the stock in the store.

Q What did Mr. Brown say to that? A Mr. Richardson said then, Well, draw the agreement, and I will have that taken care of; whether it is corporation, or how it will be.

Q Who was Mr. Richardson in the transaction? A He is a broker, representing Mr. Brown.

Q All right. Was the agreement completed? A The agreement was completed.

Q Was it signed? A It was signed.

Q Looking at Plaintiff's No. 9, I ask you if that is a copy of the agreement, and if it bears your signature?

A That is my signature.

140 Q And Mr. Richardson witnessed it? A Yes, sir.

Q Now, you said there was some mention made of a corporation at the time this was signed. Was there anything further said before the thing was signed? A No.

Q At the time you signed the instrument as a party

to the bargain, did you know or had you been told you were later to see an attorney in Washington that day? A No.

Q Had you heard the name Mr. Levin mentioned? A No.

Q Now, did there come a time when Mr. Levin's name was mentioned? A Yes.

Q Had you ever met Mr. Levin prior to this time? A No.

Q What was said about Mr. Levin, and who said it? A Mr. Richardson said he had called up Mr. Levin while we were making this agreement and Mr. Levin would handle the one part, or, the liquor license. I think that is the way he put it.

Q What did you say to that? A I said I am not going to Mr. Levin's office, if it is an attorney I will go to 141 Mr. Canfield, and I think there was a week or ten days—

Q Did you consider that this was a final agreement? A I thought it was to be concluded at a little later date.

Q And was it understood that I was to be your attorney? A Yes, and I said I wanted a half interest delivered to me legally, and I wanted to own it.

Q Did you go to Mr. Levin's office? A No.

Q Did anybody go to Mr. Levin's office? A Mr. Rudberg said he was going.

Q All right. A I said, if you want to go, it is all right, but I am not going to go.

Q What Hotel were you staying at? A The Ambassador.

Q 14th and K? A Yes.

Q Did Mr. Rudberg go to Mr. Levin's office? A Yes.

Q Did he later report back to you? A Yes.

Q Tell us what was said? A He said he went 142 there at Mr. Levin's office, and Mr. Levin said, I guess I can take care of this for you, either you can form a corporation, or I can get a man in town that can be used for a year, and it will be changed over to you.

I said I want my one-half legally, or I do not want it at all.

Q Well, did you consider or consent to these suggested arrangements which Mr. Rudberg brought back from Mr. Levin? A No.

Q What was done? A Nothing.

Q What did you do that day, if anything? A After that we went home.

Q And did there come a time when you contacted me?

A I called your office that day, they told me you were on vacation.

I left word when you returned if you will kindly call Shenandoah.

Q Did you leave your name? A I left my name but I asked you to call Mr. Rudberg, because I am out more.

Q Did there come a time when I did call you? A Yes.

143 Q What happened after that? A Mr. Rudberg and I came to Washington.

Q How soon after the telephone call? A Well, I would say two or three days.

Q At that time did you come to my office? A Yes.

Q Will you relate what happened? A We stated to Mr. Canfield what had been done and we stated we had done it because he was out of town. He said, Just a minute. You don't live here, so legally you cannot obtain a license in the District of Columbia.

I said that I did not know that. I began to get scared, inasmuch as Mr. Levin told Mr. Rudberg what he could do.

I said I was no party to it inasmuch as it would put the store in somebody's name other than ours.

Q Do you recall whether or not Mr. Canfield read the regulations? A Yes, and he said, I will call Mr. Schwartz; he handles more of that business than I do. And Mr. Schwartz came over to your office.

Q Did Mr. Canfield talk about forming a corporation?

A He talked about it and said that even if you form a

corporation you have to have a local manager and he has to be O.K.'d by the liquor board.

Q Was anything said by Mr. Canfield about the
144 application of Mr. Levin, if you followed his plan?

A He said Mr. Levin and I would go to jail, if that happened.

Q Then what happened? A You and Mr. Schwartz talked and Mr. Schwartz took us over to his office to supposedly file an application, which you thought could not be done.

Q I hand you Plaintiffs' exhibits 4, 5, 6 and 7 and ask you if these were prepared by Mr. Schwartz? A Yes.

Q Is this your signature? A Yes.

Q Now, did Mr. Schwartz do anything with reference to a telephone call? A In filling out these papers he went halfway and said, you cannot legally qualify and it is a waste of time to take this application to the Board, but to satisfy you and Mr. Canfield, I will call the Board; and then they told him that we could not get the license in the District of Columbia, being non-residents.

Q Then what happened after that? A Then we said if we cannot do it legally, we will ask you to take the deposits back.

Q Did I make an attempt or demand in your behalf?

A You made a demand for the money.

145 Q Has that been returned? A No, sir.

Q Now, at any time, Mr. O'Neill, did you feel that this instrument, Plaintiffs' Exhibit 9, was to be the final paper work necessary to complete the transaction?

MR. SHINBERG: I think that has been asked more than once.

MR. CANFIELD: I did not ask this witness.

MR. SHINBERG: I think you did ask this witness. In any event, that paper speaks for itself.

THE COURT: He may answer.

THE WITNESS: I did not feel that that was the completed agreement.

* * * *

149

Cross Examination

* * * *

151 Q On the basis of what Israel told you, the first
thing you knew was that Harry himself in his own right
was interested in purchasing a liquor store; is that
152 correct? A That is right.

* * * *

157 Q Well, that is what I am trying to get at. What
made you think they wanted you to become part of
it. A Well, I thought the business was pretty big and
they could use two people for full-time work.

Q But it was your own idea? A Yes, sir.

Q Unsolicited by either Israel or Harry? A That is
right.

Q Well, when you suggested his taking you into the
business, what was his reaction? A Well, it was all right.
When Harry could not go through with it, we thought
maybe we could take it over.

Q It was their discussion you, Israel and Harry might
take part in it? A In the conversation I was satis-
158 fied for it to be Israel and Harry and myself, and it
later turned out——

Q Well, do not tell us what later turned out. A I was
satisfied with a one-third interest.

* * * *

Q In other words, your plan at that time was this: That
in the event Harry was not able to conclude this transaction
himself, that you and Israel would step in and make it a
three-man deal, or if Harry was not able to go through with
it at all, you and Israel would take it over? A Well, that
is what it would turn out to be; that is what it wound up
to be.

Q Well, what I want to know is what happened at that
time? A The understanding was that I would be a pos-
sible one-third partner.

159 Q A possible one-third partner? A Yes, sir.

* * * *

Q And you did not ask Israel any questions concerning the operation of the store, did you? A I do not think I said—I do not think I would care to ask him because he was never in the liquor business to my knowledge.

Q You did not even bother to find out whether he in the meantime had acquainted himself with the operation of a liquor business in Washington, did you? A Well, I had confidence in him and his family.

Q In other words, anything he did was all right
160 with you? A I would say it was. He is a pretty honorable chap.

Q You had known him for years and had been in business with him for years? A Yes, sir.

* * * *

Q Well, at the last meeting the thing was sort of left hanging in the air, was it not?

Now, at the time of your third visit with Israel, did he report back to you as to whether any of these developments had taken place? A He talked to me and said he was
161 being pushed by the broker, Mr. Richardson, and he said, do you feel the same way about the store?

I said yes. He said, Do you think we ought to extend a thousand dollars to my brother Harry and let him go to Washington and tie this bargain up?

* * * *

Q So that the plan was still the same, that Harry could possibly be involved in this transaction? A That is right.

* * * *

Q Now you say he told you that the broker was pushing him. Did he say he had been contacted by the broker? A I think he said his brother Harry was contacted by the broker.

Q Did he go into any further details about the broker's position in this matter? A No, he said he thought possibly Harry was trying to get money from his brother-in-law, Mr. Selis of Washington, and it looked as though he was just stalling and he would not get money, and he
 162 wanted to know then if we should send this \$1,000 down and if Harry dropped out of the picture, would we take it over ourselves, and I said, it is perfectly all right and if Mr. Selis does not come through, then we will take over the business.

Q Then that meant you and Israel would each put in \$17,500 in cash; is that right? A That is right.

Q Together with some additional sum of money, to take care of your operating expenses; is that right? A That is right.

Q And you had that amount of money to invest at that time, and as far as you knew, Israel had, too? A I imagine he had. I did not ask him.

Q And at that time it was understood you and Israel would form a partnership? A That is right.

Q And still no discussion of the requirements of the District of Columbia as to the operation of a liquor store? A That is right.

* * * *

163 Q So that the thousand dollars which was put up by Harry belonged half to you and half to Israel? A Not at that time. I gave it to him afterwards. He mailed the \$1,000 to his brother. I took care of my share of it afterwards.

Q You reimbursed \$500 of it? A Yes, sir.

* * * *

164 Q In other words, do I understand you to mean by that, if it was decided to make a 3-way split, you would take a third? A I would be one-third with Harry, Israel and myself, or one-half with Israel and myself.

Q Harry did not put any money in at that time, did he?

A I do not know. The thousand dollars was to tie that bargain, and that would depend on his answer from Mr. Selis.

Q Well, that was put up by you and Israel? A Well, Israel put up the money, but I reimbursed him later.

Q Well, why didn't Harry put it up? A That was no concern of mine.

Q You did not care what happened between Israel and Harry? A That is right.

165 Q You were satisfied to do whatever was agreeable to Israel? A That is right.

* * * *

Q I see. Now, subsequent to that conversation did there come a time when you found out definitely that Harry's plans had fallen through and it would be necessary for you and Israel to take this deal over yourselves? A After the one thousand was paid?

Q Yes. A On August 10 Israel received a telegram from Harry stating that Mr. Selis was definitely out,
166 and he wanted to know then if I wanted to take over with him one-half each.

Q And you told him that was agreeable to you? A Yes.

Q Now was that the first time you definitely knew Harry was out of the deal? A That was the first time.

Q Was it contemplated that Harry would be an employee? A No, because I intended to go down there and work full time.

Q And Israel was, too? A Yes.

Q And Harry was excluded from the plans altogether? A Well, that was partners going into the business and going to work.

Q That was what I meant. Harry was not involved in your plans at all then? A No, we did not talk about his working.

Q Not even as an employee? A Israel and I were going to run and operate the store.

Q Now, pursuant to that news contained in the telegram, you and Israel Rudberg came to Washington. And the purpose of your visit at that time was to tie that transaction up in your own names? A That is right?

* * * *

168 Q Now, when you saw Mr. Richardson, did he introduced himself to you? A I think we introduced ourselves to him.

Q Well, you knew Mr. Richardson was a broker?
169 A A broker, an agent for Mr. Brown in this particular store.

Q Yes. You knew he was attempting to sell Mr. Brown's liquor store. Now, you say you think he went to look at the store on that occasion? A On what occasion? Well, on one occasion I looked at the store and looked at the location.

* * * *

170 Q When you got to Brown's office, was Mr. Brown there? A He was waiting.

Q Who else was there? A Mr. Richardson, Israel Rudberg and myself.

* * * *

Q Well, when you got there the purpose was to discuss this transaction, was it not? A The purpose was that he had refused the thousand dollars, and we had an additional thousand dollars to give Mr. Brown, hoping that would be sufficient.

171 Q In other words, at that time, Mr. O'Neill, you knew on the basis of information conveyed to you by either Israel or Harry that Mr. Brown wanted a \$5,000 deposit; is not that right? A That is right.

Q And you were attempting to get Mr. Brown to reduce his terms of sale so you could put up only \$2,000? A We wanted to look—we wanted him to allow us to put up \$2,000 and make an agreement that we could go over his books and establish the business, the volume and the profits of the store.

Q Why weren't you willing to put up the \$5,000 deposit? A I did not feel like putting up \$5,000 if you can get it for \$2,000.

Q Why? A Well, I thought \$2,000 was good faith enough to know that we were not just fooling.

We wanted to know the volume and whether the profits was there.

Q Well, you knew the volume of business could be covered, did you not? A Well, I am not a student of contracts.

Q As a matter of fact, your accountant had been there and Mr. Brown had showed him the bills, had he not?

A He went with Harry and was shown some bills
172 and that is all.

Q Well, you were to put up an additional thousand dollars? A Yes.

Q Because you were satisfied to buy that store? A By the accountant's report of the bills on the store that he had seen.

Q And if you knew—You knew at that time you were prepared to buy the store and put a \$2,000 deposit; right?

A That is right.

* * * *

Q You controlled at least \$20,000? A Do you mean was I worth that much money?

Q You were on that occasion, weren't you? A I was able to pay \$17,500 and still have additional money to operate the business.

Q You had the money that was required for the cash payment? A That is right.

Q Then why were you not willing to put up the \$5,000?

MR. CANFIELD: If your Honor please, I think
173 he has stated the reason was he wanted to see the books, first.

THE COURT: Sustained.

* * * *

Q As a matter of fact, what he told you on that occasion was this, was it not, that Harry had been in contact with him, that he knew that you and Israel were interested in the store, and so long as you had evidenced that interest, he would give you additional time to put up the \$5,000 deposit, and he would hold the store for you, he would not sell it to anybody else in the meantime.

Is not that right? A He just said he wanted \$5,000 and we said we did not have it with us, and he said it was all right, we could come possibly the next week or some
174 days later, we could come and pay the difference and then make an agreement.

* * * *

175 Q Yes. You were in Mr. Brown's office and you knew Mr. Brown would not take less than the \$5,000 deposit. A That is right.

Q Why didn't you and Israel draw checks for \$1500 apiece on some fund outside of Washington? A Because I understood he wanted a cashier's check.

Q He wanted a cashier's check? A Yes.

* * * *

Q I want to know if Mr. Brown insisted on a cashier's check.

176 THE COURT: He just answered that and said no.

BY MR. SHINBERG:

Q Then I ask you again, why did you not draw a check on the same funds that you had in your Shenandoah bank?

THE COURT: Is not that the same question?

MR. SHINBERG: Yes, Your Honor, but he stated Mr. Brown did not ask for cashier's check.

THE COURT: I think the answer is sufficient.

MR. SHINBERG: Very well, Your Honor.

BY MR. SHINBERG:

Q Now, on that occasion Mr. Brown told Mr. Israel Rudberg that he and you were not qualified to hold a liquor license in the District of Columbia because you were non-residents; is that correct? A There was something to that effect, and he talked about, are you going to have a corporation.

Q Mr. Brown said that? A That is right.

Q Did he address his question to you? A I think it was to Mr. Rudberg.

Q To Mr. Rudberg? A Yes.

Q What did Mr. Rudberg say? A Well, the purpose of that meeting—

177 Q Well, tell me what Mr. Rudberg said, if you know. A I do not know. They were talking to Mr. Brown.

Q Well, you were right there, you heard the conversation, didn't you? A Yes, but my mission at that time was to give a deposit.

Q You were not interested in anything else? A Anything else, because I was satisfied we would just go back home that day.

Q You paid no attention to the question of the liquor license? A Nothing at all.

* * * *

Q Didn't you testify yesterday, Mr. O'Neill, in response to a question by Mr. Canfield, that prior to the signing of the contract on August 17th you had no knowledge
178 whatever of the requirements of the liquor law in the District of Columbia? Did you not testify to that yesterday? A Yes, sir.

* * * *

BY MR. SHINBERG:

Q One of the first items after you got to Mr. Brown's office was that Mr. Brown told you that both you
179 and Rudberg were not eligible to hold a liquor

license in the District of Columbia? A I did not hear that.

Q You were present? A I was finished and we were going back home, we didn't have enough money to make the agreement, so there was nothing further to go into at that meeting.

Q You were still satisfied with whatever Mr. Israel Rudberg was willing to do, were you not? A Well, I could use my own judgment, too.

Q Well, I am asking you if you were satisfied with what Mr. Israel Rudberg would do? A If I was satisfied.

Q Well, nothing had happened to disturb the friendly relations between you and Mr. Rudberg? A That is right.

Q In any event, you were leaving, and the one idea was to go back to get the additional money; is not that correct?

A Yes, sir.

Q And you got the additional money? A Yes, sir.

Q And you came back to Washington? A Yes, sir.

Q Now, from the time of the meeting in Mr. Brown's office until the date you came back to Washington to close the deal, was anything said by Mr. Israel Rudberg to the effect that neither he nor you was eligible to hold a liquor license in the District of Columbia because of non-residence? A No, he talked about it and said we could buy it and have the business in our own name.

Q Mr. Israel Rudberg told you that? A That is what he thought.

Q And that was after the visit to Mr. Brown's office; is that correct? A That is correct.

Q You are sure about that now? A Well, I am—I believe that I was told that I could buy, or we could buy the business and legally own the business and operate it.

Q In your own name? A In our own name.

Q As individuals? A Well, I did not go into that, just said we could buy the business, own it and operate it.

* * * *

* * * *

184 Q When you got to the other office Mr. Abrams told you you should go out and get an attorney of your own choice, did he not? A Mr. Abrams said, have you got counsel?

I said no, I had called a friend, a man from our or my home town, Mr. Canfield, and he is on vacation.

Q Didn't you tell Mr. Abrams you did not need
185 counsel at that time? A He said I do not like to go on without counsel, but he proceeded with this agreement.

Q Well, that met with your approval, did it not? A Well, I had in mind in finishing this agreement that Mr. Canfield would represent us, as far as I was concerned.

Q Well, you knew once that agreement was signed it would be a binding agreement? A I did not feel it was to be finished.

Q In other words, when you started on that occasion at 4 o'clock, August 17th, you did not think you would be able to complete the transaction? A Oh, no; I did not think that was a finished instrument he was preparing.

Q You did not think it was? A I thought there was more, that when my counsel came home we would finish it.

Q In other words, you thought when Mr. Canfield came back from his vacation there was going to be another contract? A That is right, or something added to this one, but that was not finished, in my mind.

Q By the way, before Mr. Abrams started to dictate this contract, Mr. Abrams also told you and Mr.
186 Israel Rudberg that as non-residents of the District of Columbia, you were not eligible to hold a liquor license here, didn't he? A He said, is this going to be a corporation?

Q I ask you now the question: Did Mr. Abrams tell you and Mr. Israel Rudberg prior to preparing the con-

tract that neither one of you two gentlemen were eligible to hold a liquor license in the District of Columbia? A No, sir.

Q You deny that he made that statement to you?

Now, you say that there was some reference made to the formation of the corporation? A That is right.

Q Did that occur to you as to why there should be the necessity of forming the corporation? A Well, if my memory serves me right, Mr. Richardson said that that part we will take care of; just make the agreement and we will take care of—whatever was going to be, a corporation, or how it is going to be handled, that he will handle that.

Q Then you were satisfied? A Well, I did not know, I was not familiar.

Q Mr. O'Neill, how old are you? A 55.

Q 55. And you have had a lot of business experience, have you not? A Well, not too much. I had a retail store and general insurance.

Q You were in the general insurance 15 or 16 years, were you not? A That is right.

Q You have had occasion to see contracts on previous occasions, have you not? A No.

Q Never saw a contract in your life? A Oh, yes; I have seen a contract. I sell fire insurance, automobile insurance.

Q And insurance policies; an insurance policy is a contract, is it not? A That is right.

Q You know what a contract is, do you not? And you knew about it on that occasion, did you not?

Now, you knew that Mr. Richardson was just a broker, did you not? A I knew he was an agent for Mr. Brown.

Q Well, did you ever ask Mr. Richardson if he was an attorney? A No.

Q Did he tell you he was? A No, sir.

* * * *

188 Q When he finished dictating his young lady began to type the contract? A Yes, we all waited there for it.

Q When she finished the contract she brought it back in the room? A Yes.

Q And each of you was given a copy of it? A Yes.

Q And someone read the contract aloud while you were following it on the copy? A I cannot recall whether it was read aloud or not.

Q Well, you had your copy, too, did you not? A I had my copy.

189 Q You read it, too, complete? A Yes.

Q And after reading it, Mr. O'Neill, you knew that the only contingencies contained in this contract pertained to the transfer of the ABC license and the transfer of the lease; is that correct? A No, the idea in my mind was to get this thing done because I had asked Mr. Brown about going over his books and volume, but that he would not permit until this amount of money was paid. That was the one reason we were there, to put up the additional money.

Q In other words, you were to put up the money to look at Mr. Brown's books? A Until some sort of agreement was made, he would not allow the accountant to look at the books.

Q Well, I understood the accountant had looked at the bills? A Well, I wanted to know whether it was profitable.

Q I see. Now, that was the real reason why you wanted to tie the deal up? A No, my reason was to put up the money and buy the business.

Q Well, didn't you feel when you signed the contract that you had bought the business? A I thought
190 we were going to complete the deal to eventually bind the business.

Q You said you wanted to look at the books so you could find out whether the business was profitable or not,

is that right? A Well, I wanted to see if there were any facts that were given to us, the volume.

Q What volume did you expect to find? A The figures that I think were supposed to be given by Mr. Brown to Mr. Richardson. I said let us go over the accounts and see what they are.

Q Well, did you have any particular figure in mind that was to be complied with, such as \$5,000 per week gross sales, or \$10,000 a week gross sales? A Well, looking at the books I would actually know what it was.

Q I see. And you also wanted to be certain that the business was profitable? A Well, naturally I wanted to buy a profitable business.

Q And what sort of profit did you expect this business was going to yield to you? A Well, whatever the usual is in the liquor business.

Q Well, what is the usual in the liquor business?

A I could not tell you offhand what it is, 25 per cent, I do not know.

Q Well, then will you please tell me why the books were so important to you when you did not know what the profits would be and what the sales would be? A I thought we would learn from that.

* * * *

Q Well, Mr. O'Neill, there is nothing in the contract, is there, that that store is going to yield a particular amount of profit?

192 MR. CANFIELD: If the Court please, I object. The contract is in evidence and speaks for itself.

THE COURT: Objection sustained.

BY MR. SHINBERG:

Q Now, Mr. O'Neill, prior to signing this contract, you knew, did you not, that as individuals you and Mr. Israel Rudberg could not obtain an alcoholic beverage license in the District of Columbia? A Prior to signing this contract?

Q That is right. You knew that, did you not? A Yes.

Q Then I ask you the question, why did you sign this contract? A Because I was told that I could sign that and be a partner and legally operate a liquor store.

Q By Mr. Richardson? A That is correct.

Q Mr. Brown never told you that, did he? A I had most of the conversation with his agent.

Q Mr. Brown was present? A Yes.

Q He never told you anything like that, did he? A Mr. Richardson did quite a bit of talking, too.

Q Mr. Brown never told you anything like that? A No.

193 Q And Mr. Abrams never told you anything like that? A Well, possibly we were a little late getting to his office, I was in a hurry to get home, it was getting late. Mr. Abrams was in a hurry.

Q You were both in somewhat of a rush? A Yes.

Q As a matter of fact, you did not get out of there until 5:30, did you? A It may have been somewhere between 5:30 and 6 o'clock.

Q As a matter of fact, the reason you signed this contract the way it is drawn, is because you knew it was necessary for you and Mr. Rudberg to do some other things, namely, form a corporation, or some other act, to get a license? A Well, I did not want a corporation.

Q Well, you knew you could not do it in your own names, and would have to do some other things? A Well, I was told that I could get that legally. Up until that time you are asking the questions now?

Q Yes. A Up to the time of the contract?

Q Yes. You knew there was some other thing that had to be done in order to qualify you and Mr. Rudberg for liquor licenses in this city, did you not? And Mr. Richardson was going to take care of the mechanics of it
194 by introducing you to some one who could do it for you? A I was led to believe that.

Q And when you say this thing was not complete, that was the thing that remained to be done, was it not?

A No, there was an inventory to be taken, an accountant to go over the books, the amount of goods in the store.

Q Well, that is covered by the contract, is it not? A Yes.

* * * *

195 BY MR. SHINBERG:

Q What remained to be done when this contract was executed by all parties? A Well, I had in mind that as soon as my counsel came back, Mr. Canfield, he would go on from there.

Q You still have not told me what remained to be done?

A I would know what would be needed, when I talked to my attorney.

Q I see.

196 A I went to his office and he was not home, and I was going to complete that on his return.

* * * *

MR. CANFIELD: May it please the Court, Mr. Abrams is a party-defendant in the action. I desire to examine him under Rule 43-B.

THE COURT: All right.

* * * *

Morris Abrams

* * * *

Direct Examination

* * * *

Q Your name is Morris Abrams? A That is correct.

Q Mr. Abrams, you are a member of the bar of this Court? A I am.

197 Q Prior to 1945 had you been an attorney for Mr. Brown, defendant in this case? A I have known Mr. Brown a number of years and I have taken care of matters for him. I represented him when he purchased this store.

* * * *

Q Are you acquainted with Mr. Guy Richardson? A I know him now, when he came up there in this particular transaction. I did not know him before.

* * * *

Q Now, in what capacity was Mr. Richardson there?

A He was a business broker.

198 Q For whom? A He was involved as broker in the sale of this liquor store which Mr. Brown was selling.

Q Is it not a fact that he was the agent for sale of this particular liquor store of Mr. Brown? A Yes, he was handling the deal.

Q And you understood him on that occasion, on this first visit, to be representing Mr. Brown as his agent in this transaction? A I would not put it that way. I would say he was representing the parties trying to bring them together to consummate the deal.

* * * *

Q Is there any doubt in your mind when they came there you either learned it before or learned it then? A Learned what?

Q That Mr. Brown had authorized Mr. Richardson to advertise his liquor store? A Oh, I did not doubt that a bit.

Q Then it is a fact when they first came there you knew Richardson was representing Brown in the sale of
199 this liquor store? A Yes.

* * * *

Q Well, as you look back now, was it Harry or Israel that came to your office on the first visit? A I believe it was the gentleman sitting in the rear.

Q Harry? Tell us what happened on that first visit. A Very little. My recollection is the first thing that was discussed was the inadequacy of a thousand dollar deposit. We also discussed the ineligibility of our securing an ABC license.

Q When you say "we," who do you mean? A I, Mr. Harry Rudberg, Mr. Brown, and Mr. Richardson were there.

Q Can you recall substantially what was said on that visit? A I think I had more to say than anybody else.

Q Tell us what was said. A We discussed the general qualifications, I called Mr. Rudberg's attention that to qualify as individual, he either had to be a resident for one year, or to be gainfully employed in the District for one year; general comments about organization of a corporation to qualify.

Q Now, in discussing corporations, did you point out the requirements as to what would be necessary in the event the corporation was organized? A I do not recall that we went into that in absolute detail.

Q Then am I correct that it was a superficial discussion? A Yes, it was.

Q And was it made clear that a thousand dollars would not be acceptable to Mr. Brown? A Yes.

Q And that was made clear to Mr. Harry Rudberg? A Yes.

* * * *

202 Q Now, did there come a time subsequently, when you had a further conversation with Mr. Brown, Mr. Richardson, or others with reference to the transaction? A Yes, Mr. Brown, Mr. Richardson and Mr. O'Neill at the office, and that gentleman I now know to be Mr. Israel Rudberg, was at the office.

Q Can you fix the date of that conversation? A Well, the contract was the 17th and it was that date.

Q August 17, 1945? A Yes.

Q When did you first know these people were coming to your office? A I do not recall; I know it was very short notice.

Q That day? A Yes.

Q Now, when you got to the office, were they there? A I do not recall. I heard Mr. O'Neill testify; I came in later. I do not recall.

Q Well, whether you came in later or not, there did come a time when you, Mr. Brown, Mr. Richardson, Mr. O'Neill, and Mr. Israel Rudberg met to discuss this transaction, right? A Yes, sir.

Q Suppose you tell us what transpired? A The
203 first thing I asked, I believe, was whether or not they had consulted with counsel to represent them. And my present recollection is that they said there was a friend of a friend of theirs in the district practicing law.

My recollection now is your name was mentioned.

Q The name Austin Canfield was mentioned, was it not? A Yes, I am pretty sure it was.

Q Now, you were told that I was from their home town? A Yes, something like that.

Q After you asked them if they were going to have counsel, what did they say? A I think it was a little lengthier than that, I pointed out to them that I personally did not like to represent both parties in a transaction involving the sale of a business, that I thought there should be counsel representing seller and other counsel representing buyer.

The atmosphere was very cordial and very friendly and they then told me that they had tried to contact you, that you were not available, and that as far as they were concerned, they felt Mr. Brown was a very fine gentleman and trustworthy, and as far as I was concerned, it looked like it was all right to go ahead and prepare an agreement,

and then they would get in touch with you as soon as you
 were available, to take care of the balance of the
 204 deal.

* * * *

Q Now, did you prepare an agreement that day? A
 the 17th?

Q Yes. A Yes.

Q Tell the Court how you did it, what method you used
 to prepare the agreement? A Well, I got all of the facts,
 the sales price, settlement date, if any, inventory taken
 and so on, and then proceeded to dictate it on the Dicta-
 phone.

Q Now, up to this time, was anything said about the
 legal ability of these men to qualify? A Oh, yes, that
 was one of the first things that was discussed.

Q Well, tell us. A General discussion about being
 residents of the District of Columbia or gainfully em-
 ployed in the District of Columbia for one year, whether
 a corporation could qualify for a liquor license.

205 At that time, as I recall, they mentioned the name
 of Selis.

Q Who mentioned the name of Selis? A I do not
 recall. As a matter of fact, I believe the name of Selis
 was mentioned twice, the first and the second meeting. I
 think they told me Selis was not available. I believe I
 suggested he should be present, and was told he was not
 available.

Q Was it made clear to you he was not interested in the
 transaction? A Not definitely.

Q Well, what was your understanding when you pre-
 pared the contract, as to the Selis connection? A That
 he might be an interested party.

Q You were rather concerned as to whether he would
 be an interested party, were you not? A Not particularly

Q Well, you did have some discussion with them as to
 what part he, Selis, would play? A General discussion.

* * * *

206 Did you understand that Harry Rudberg would be interested? A No, I did not understand that anyway.

Q Now, when you told them that they could not qualify, and you discussed the corporation, what did they say, if anything? A I do not recall.

I do not recall any direct answer to it as far as the fact that the mechanics of completing the transaction, or the completion of the application to the ABC Board and so would be taken care of as soon as they got counsel.

Q By a corporation? A They did not say specifically.

Q Well, did you understand that a corporation would be the ultimate transferee? A I understood that was what they had in mind.

Q Well, did you understand then that the transaction would be concluded with Mr. Brown and a corporation would be organized? A No, I would not put it that way.

Q How would you put it? A The parties understood they could not qualify individually or as a partnership, and whatever they decided to do, Mr. Brown would
207 cooperate with them so the transfer of license could be procured.

Q Then this was not a completed instrument that you prepared, was it? A I would not say that.

Q Well, now, take a look at Plaintiffs' 9 and 10. A All right.

Q You prepared those instruments, did you not? A (Examining papers) I am not reading them all, but I assume I did. This is my handwriting at the bottom.

Q On No. 10? A Yes.

Q You prepared these instruments? A Yes.

Q And you prepared them as counsel for Mr. Brown, didn't you? A My answer to that, Mr. Canfield, would be this—

Q Well, I want a yes-or-no answer. A I am afraid I cannot answer it yes or no.

Q Well,—

MR. CANFIELD: I submit to the Court it is capable of such an answer.

THE WITNESS: May I have the question again, please?

(Question read.)

THE WITNESS: My answer is, I was acting for
208 all the parties who were present in my office.

Q When were you retained by Rudberg and O'Neill? A There was no definite understanding. As a matter of fact, I did not intend to bill them.

Q Well, what led you to believe that you were representing them? A I did not say specifically, Mr. Canfield, that I was representing them. You asked me as far as this agreement was concerned, Mr. Canfield.

Q That is right. A That was done at the direction of everybody. I was representing Mr. Brown, not Mr. O'Neill and Mr. Rudberg; they were to get counsel to complete this transaction. They were not to pay me any fee. At least, I did not intend to collect any fee from them. Now, as to whether or not I was representing them in the preparation of this contract, and Mr. Brown, all I can tell you is I prepared this contract at the direction of all the parties who were in my office.

Q Did Mr. O'Neill or Mr. Rudberg ask you to represent them legally? A They did not say Mr. Abrams, will you represent us, no.

Q Now, when you prepared this contract—

THE COURT: Just a moment. Didn't I understand you to say that you had advised O'Neill and
209 Rudberg to get their own counsel?

THE WITNESS: Yes, sir.

BY MR. CANFIELD:

Q Now, when you drew these instruments, Plaintiffs' 9 and 10, you know as a lawyer that your primary duty was to Mr. Brown, was it not? A I would not say that,

Mr. Canfield. I did not consider my primary duty in the preparation of this agreement as my duty to Mr. Brown. I was there to see that there was an agreement which was agreeable to everybody.

Q But Mr. Brown is the man that called you into the picture. A Yes.

Q As his counsel? A Yes.

Q Now, twice you have used the expression "Completion of the contract". A I do not know whether I said "completion of the contract".

Q Well, complete the deal. A This transaction.

Q Is there any doubt in your mind that when these instruments were prepared, it was registered by everybody that this was an incomplete transaction, that some-
210 ing further was to be done at a subsequent date? A

I do not think your question is—Well, I will withdraw that. This was a completed agreement. The parties did understand though, that Mr. O'Neill and Mr. Rudberg would take care of the application to the ABC Board, the forming of a corporation, if one was to be formed, and so forth.

Q Well, let us start at this premise. Is there any doubt in your mind that they knew and Brown knew and Richardson knew that these men were legally disqualified to take an assignment of this liquor store and operate it under their own name? A No question about that at all.

Q That was clear in everyone's mind, was it not, that this was a legal impossibility? A That they were not qualified to operate the store as an individual or as a partnership.

Q Did you not know it was a legal impossibility?

MR. SHINBERG: I object to that question. It calls for a conclusion.

MR. CANFIELD: Well, I am not cross-examining, I know, but it calls for an opinion. Read the question.

(Question read.)

THE WITNESS: I know legally they are ineligible.

BY MR. CANFIELD:

211 Q And you knew that in order to take over this store, they would have to do something other than is provided for in this agreement? A I would not say other than is provided for in this agreement, but there was something they had to do, such as the organization of a corporation.

Q And that is not provided for in the instrument, is it? A No, I do not know of anything in the instrument about corporation.

Q You knew, Brown knew, and they knew that the way this agreement was drawn by you, that under the law they could not take the transfer of the license to this store? A They knew and I knew and everyone knew that was there that they could not get a license to this business in their names as individuals, or as a partnership.

Q And is it not a fact, also, that you knew and Brown knew and they were told that something further had to be done in order to qualify them legally to complete this deal?

A Yes.

Q Why did you not put it in the contract? A First, I did not think there was any question about that, that was discussed and definitely understood.

212 In addition to that, it would not have—it would have been apropos to put in there.

Q What do you mean, it would have been apropos to put it in there? A Well, it would not have been good policy to make some specific mention of it, other than what their understanding was at the time this contract was being drawn.

Probably the best explanation for the entire thing is this: That is was late in the afternoon, everybody was in a hurry, they were in a hurry to get back home, I was in a hurry to get away, and wanted to get away from the office.

As we very often do, this agreement was dictated using a prior agreement in another case involving a similar type

of business operation, and dictated and typed up.

It was all a very hurried job.

* * * *

213 BY MR. CANFIELD:

Q Will you concede that it is lacking in any provision for the organization of the corporation which you all understood would be necessary in completing the deal?

A The contract speaks for itself.

Q It does, but will you concede it is not fair? A It does, but—

MR. CANFIELD: Your Honor, ordinarily, I would not make the objection I now move, that that last question and answer be stricken, inasmuch as the contract does speak for itself, in accordance with Your Honor's previous ruling.

THE COURT: He has answered it. It will do no harm.

THE WITNESS: I have already answered, Your Honor.

BY MR. CANFIELD:

Q You said this was done in a hurry, you said it would be apropos to put in a corporation. If that is so, how do you justify the language you use in paragraph 14? A I do not know what you mean, How do I justify 14?

Q You read it, did you not? A Yes. "This agreement represents the entire understanding between the parties hereto and no agreement which is not herein incorporated shall be binding upon the parties."

214 Well, there was an understanding by the parties.

There was an understanding that they were to qualify and the organization was discussed.

Q That is what I asked you, since that is not in the agreement, and since that is the agreement, as I understand from you, why did you put in Paragraph 14, when you knew they were legally disqualified to complete that contract? A Well, the question of the ABC license—It is

understood that they were to perform the qualifications and it was not anything which had necessarily to be agreed to with Mr. Brown; they had their understanding of it and that it was going to be taken care of.

THE COURT: You have used the word "understanding".

THE WITNESS: Yes, there was that understanding that they would take care of applying to the ABC Board, and if you are inclined to put it that way, then of course, there is something which is not in this contract.

MR. CANFIELD: Let me put it this way then: You have handled quite a lot of these contracts?

THE WITNESS: Quite a few.

BY MR. CANFIELD:

Q You are familiar with the ABC regulations?

215 A Yes.

Q Now you knew there had ultimately to be a sale, if this agreement was concluded? A That is correct.

Q Is it not a fact that that agreement you prepared would have to run pursuant to Brown and Rudberg? A No, the bill of sale.

Q Who would it run to? A If there was a corporation it could run to XYZ Corporation.

Q I see. A If there was some other organization, they could do that.

Q Why did you not put that in the agreement? A It is not in the written agreement.

Q Why did you not put it in? A I have given you the answer to that before, too, Mr. Canfield.

Q I did not understand it that way. What is your answer now?

MR. SHINBERG: Your Honor, I think he has stated that once. He stated they were all in a hurry, he should have put it in; that was his explanation.

THE COURT: Objection overruled.

THE WITNESS: If we had had considerable time,
I had had considerable time to keep thinking about
216 it, and reviewing it, and checking up, I would have
noted something like that. I probably would have put
it in.

BY MR. CANFIELD:

Q Well, now you read it before you transmitted it for
signatures? A Yes.

Q Was there a discussion on it? A After the agree-
ment was prepared, you mean?

Q Yes. A I do not recall that there was.

Q Did you point out to them anything about a cor-
poration? A That was all discussed before this was dic-
tated.

Q Beforehand? A Yes, sir.

Q Now, was anything said about any other way than
a corporation? A Not that I recall at this time.

Q Was the name of Attorney Levin mentioned? A
Yes.

Q In what respect? A Whether Levin's name was
mentioned the first or second meeting, I do not recall. It
could have been the second meeting, or it could have been
the first. His name was mentioned in regard to
217 possibly representing the purchasers.

Q Was anything said about the boys going to
Levin from your office? A On this date of this meeting?

Q Yes. A I do not recall anything that specific.

Q When you first started to prepare the instrument
before it was dictated, did you and Mr. Brown have a
discussion as to whether or not you wanted the corpora-
tion? A I did not get that.

Q Read the question.

(Question read.)

A No. You mean an independent discussion with Mr.
Brown?

Q No, while they were all there. A As to whether or not Mr. Brown wanted the corporation?

Q Yes. A You mean for himself? Or, for the buyers?

Q For the buyers to take title. A Oh, he did not have any objections, as far as I can recall.

Q Did you advise against it? A I do not recall that I advised against a corporation specifically.

218 Q As a matter of fact, you told Mr. Brown as his lawyer, that you could not recommend handling this as a corporation because of no security, you know. He was tied up on the lease, and this did not look like the right thing. Do you recall that? A I do not recall it.

Q Do you deny it? A No, I do not deny it; there may have been some discussion about it. I do recall this, in regard to the lease, there was some mention as to whether or not the owners might not object to a corporation as a transferee, and then it was discussed it might be the corporation and the individuals as indemnitors, which of course would cure any objections they might have.

I do recall something discussed along that line.

* * * *

220 Q * * * * Did there come a time shortly after when Mr. Brown sold his store to other parties?

MR. SHINBERG: I object.

THE COURT: What is the ground of the objection?

MR. SHINBERG: Your Honor, what happened after this contract was signed is of no moment in this case. I do not see what it has to do with this case.

MR. CANFIELD: If the Court please, in our complaint, we claim that the paragraph in the contract styled, "Liquidated Damages", is in effect, a forfeiture, and if it is a forfeiture, I submit we are entitled to show that the store was sold to another purchaser at the same, or a better price, and if so, this would be, in equity, a forfeiture, rather than liquidated damages.

* * * *

223 THE COURT: Objection overruled. The witness may answer.

THE WITNESS: The store was subsequently sold to another purchaser.

BY MR. CANFIELD:

Q Can you tell us approximately how long after this transaction, Mr. Abrams? A I have a file on it. I represented Mr. Brown in that sale.

Q Was it about October or November of the same year? A Probably that is correct. I could tell you specifically, if I had the file here.

Q And was the consideration the same or greater than Rudberg and O'Neill had agreed to pay? A I do not recall exactly what the consideration was, but there
224 again, I can give you the exact figure on it.

BY MR. CANFIELD:

Q If the Court please, we have the ABC records which might help us put that figure in.

MR. SHINBERG: Subject to its admissibility, we can furnish the information.

Mr. Brown just told me the store was sold for \$35,000 plus dollar for dollar for stock. I am tendering the information to Mr. Canfield, but I am still objecting on the ground it is inadmissible.

BY MR. CANFIELD:

Q Who purchased that, do you remember? A I would need something to refresh my recollection.

MR. SHINBERG: Was it Dreisen?

MR. CANFIELD: Louis Dreisen?

THE WITNESS: Yes.

MR. CANFIELD: Take the witness.

Cross Examination

* * * *

BY MR. SHINBERG:

Q When Mr. Canfield asked you about your failure to insert into this contract any reference to a corporate set-up, did I understand from your answer that the parties
225 had reached an understanding as to what would have to be done by the purchasers in order to obtain a transfer of the liquor license? A Yes, that the buyers were to take care of the mechanics of applying for the ABC license.

Q Well, now, did you mean by that that the purchasers had assumed unto themselves the obligation of doing whatever they themselves thought, or whatever they themselves were subsequently advised by some other persons had to be done in order to qualify for the issuance of a license? A Yes.

Q Well, then, you did not mean by your answer that there had been any specific agreement reached between the purchasers and Mr. Brown, as to what they were supposed to do? A No, other than the fact that they were to get Mr. Brown's full cooperation.

Q Well, Mr. Brown agreed to cooperate with them in any legitimate move they might make in order to obtain the license to operate that business; is not that correct? A That is correct.

Q Well, when I asked you whether they had agreed to do it, do I understand your answer to mean that unilaterally the purchasers had undertaken between themselves without reference to Mr. Brown the obligation of doing whatever had to be done in order to get a license?
226 A That is correct.

Q Now, of course you knew as a lawyer who was well experienced in the preparation of contracts of this type, that they personally and individually would not be in a position to file an application in their own name for

transfer to themselves as individuals? A That is correct. They were not eligible.

Q However, you did understand that they personally did agree by signing this contract that they would do whatever was necessary to qualify them, or whatever agency they chose to set up as the record owner of this business for the issuance of a license? A That is correct.

Q Now Mr. Canfield asked you why you inserted Paragraph 14 in the contract? So that you will understand me, I will again read paragraph 14. A I recall the provisions.

Q You recall the provisions? A Yes.

Q I think you testified on your examination in chief, that you followed a form in preparing this contract? A Yes, I did.

Q Well, did you follow a form in the interest of saving time?

MR. CANFIELD: I object. I do not care what
227 method he followed. He had—I will withdraw it.

THE WITNESS: As a matter of fact, I did in this case, and I usually do in all such transactions use something as a guide.

BY MR. SHINBERG:

Q In other words, you used it as a guide? A Yes.

Q Also, I believe you testified that it was getting late and you were in a hurry? A That is correct.

Q And I think you said the parties themselves were in a hurry? A Yes, they wanted to get back home.

Q Was it your understanding that Mr. Rudberg and Mr. O'Neill wanted to get back home that day? A That is as I recall it.

So the pressure was on you to do a quick job? A Yes.

Q If you had had more time, Mr. Abrams, would you have inserted a provision in the contract to the effect that the purchasers are non-residents and they agree to do whatever had to be done?

MR. CANFIELD: I object.

THE COURT: Sustained.

MR. SHINBERG: If the Court please, I do not quite follow the grounds of this objection.

228 THE COURT: The question is, what they did do, not what they might have done.

MR. SHINBERG: Your Honor, I believe the testimony in this case, since it is in equity, is what their intentions were, why they did the things they did.

THE COURT: Intention of the parties?

MR. SHINBERG: Yes. The lawyer in this case certainly has a great deal to do with what the intentions were because he is the one who prepared the contract that was approved by all the parties.

Do I take it that Your Honor's ruling is the same?

THE COURT: Oh, yes.

BY MR. SHINBERG:

Q Well, let me ask you this question, Mr. Abrams: There is not much doubt that there should have been something in the contract to that effect.

MR. CANFIELD: I do not object to that.

A Yes, it would have been better if something had been in there separately.

BY MR. SHINBERG:

Q In other words, it was a mistake not to put it in? A I would not put it exactly that way.

Q Well, now, let me ask you this: Before you prepared this contract, you knew what the agreement
229 between the parties was? A Yes.

Q And you knew that Mr. Brown and Mr. Richardson and Mr. Rudberg and Mr. O'Neill all knew that as individuals Rudberg and O'Neill could not qualify for the issuance of a beverage license. Is not that correct? A That is correct.

Q You knew in essence what the real agreement was between the parties, did you not? A This was the real agreement between the parties. There was other discussion.

MR. CANFIELD: I move that go out, if the Court please. The question is: Did he know?

THE COURT: Yes.

BY MR. SHINBERG:

Q You knew what the agreement was between the parties? A Yes.

Q And you knew that Mr. Rudberg and Mr. O'Neill had undertaken to do something other than file an application in their own names as individuals? A Yes.

Q To obtain issuance of a license? A Yes, I testified to that; yes.

230 Q You knew that they felt bound by that understanding, did you not? A Yes.

* * * *

Q And you also knew that Mr. Brown felt that he was bound by the agreement which had reached fruition before you dictated this agreement? A No question in my mind about it.

* * * *

Redirect Examination

* * * *

BY MR. CANFIELD:

Q Mr. Shinberg, in his last questions made it clear that you knew that there were some certain things agreed to which are not incorporated in this agreement. A You refer now to the organization of the corporation?

Q He said you knew there were certain things which the parties agreed upon, which are not in that; is that a fact? A There was an understanding regarding the ap-

plication to the ABC Board which is not specifically in that contract.

Q And what was that? A That the purchasers were to take care of all necessary matters so that they
231 could file an application with the ABC BOARD.

Q Did that include organizing the corporation?
A Probably through the organization of a corporation.

Q Well, did it or did it not? A We did not discuss anything specifically about who was to be members of the corporation, or anything else, that was to be taken care of by counsel after this was prepared.

Q But was it a corporation ultimately that was to make the application? A Yes, that was the trend of that.

Q Then they were to form a corporation afterwards?
A Yes.

Q If that be the fact then, I direct your attention to Paragraph 6 of this agreement, that reads that the buyers—not a corporation—they will make application immediately for transfer of a license at their own expense and will diligently prosecute it?

That does not say anything about a corporation, does it? A It does not.

Q Why did you not put it in if that was the understanding? A It would have been better if it had
232 been in.

Q Then it does not reflect the true agreement of the parties, does it?

* * * *

Q Let me ask this, then: Does this agreement reflect what the parties agreed upon?

THE COURT: I think that is a question for the Court to decide.

* * * *

Stipulation

MR. SCHWARTZ: If Your Honor will indulge us a moment, we might be able to stipulate. (Conferring).

If the Court please, counsel have agreed to stipulate subject to Mr. Shinberg's objection, as to the relevancy and materiality, that in October of 1945, Mr. Brown sold

the store, which is the subject of this litigation, to a
233 man by the name of Dreisen, Louis Dreisen, —
D-r-e-i-s-e-n, for a total price of \$35,000 plus the dollar-for-dollar value of the inventory which was to have been taken.

That the cash payment was \$35,000 and that the terms of the sale to Mr. Dreisen were substantially the same as those purportedly set forth in the contract about which we have been inquiring.

Counsel also have agreed to stipulate that I, M. F. Schwartz, contacted a representative of the Alcoholic Beverage Control Board during the month of September, 1945 and informed them that I was about—that I was preparing an application for the transfer of a retail Class A liquor license, which is the term applied to the Package Store in the District of Columbia for the sale of alcoholic beverages, and that the application will show on its face that the two persons who were applying as partners for the operation of this store had not at any time been residents of the District of Columbia, nor had they ever been gainfully employed in the District of Columbia, nor had they ever held a liquor license under the Act of January 20, 1934, which is the Act of the ABC Board sales in the District of Columbia; and which was never filed.

(Counsel confer aside.)

THE COURT: Did that stipulation cover the results of that conversation?

234 MR. SCHWARTZ: That we have just had?

Well, we were conversing with regard to another element of this case, if the Court please. I believe that the

stipulation covers, in so far as we are concerned, the fact of the subsequent sale to another person, and the fact that the application was not filed, and the reason that it was not filed.

THE COURT: That is the point that was raised here, does it show the reason?

MR. SCHWARTZ: May I then supplement the stipulation by saying that counsel now stipulate that Mr. Schwartz contacted a representative of the ABC Board, informed said representative that counsel was preparing an application for the transfer to two persons of a Retail Class A Package Store, that the application would show on its face that the proposed new licensees had never been residents of the District of Columbia, had never been gainfully employed in the District of Columbia and had never been the owners of a liquor license under the Act of January 20, 1934; asking the representative of the Board whether or not the application showing such a statement of facts on its face would be accepted, and counsel was informed that it would not be permitted to be filed, because it did not comply with Section 32 of this regulation.

* * * *

235

Christian Wittingham

* * * *

Direct Examination

* * * *

THE WITNESS: Christian Wittingham.

* * * *

BY MR. SHINBERG:

Q You are employed by the Alcoholic Beverage Control Board for the District of Columbia? A I am.

Q How long have you been so employed? A 13 years.

Q 13 years. You are well acquainted with the Alcoholic Beverage Control Act for the District of Columbia,
236 and the regulations with respect thereto? A Yes, sir.

Q You, yourself, do not have any independent recollection of the conversation with Mr. Schwartz which has been related here, do you?

Q Relating to what? A With reference to the filing of an application? You did not yourself talk to Mr. Schwartz, did you? A No, sir.

* * * *

237 Q Well, what I want to know is, is there anything in the Act or the regulations which gives you the right to refuse to accept for filing an application which shows on its face that ultimately the Board would refuse it? A Well, only that we are instructed to use ordinary judgment.

Q Well, you would have no right to refuse to file it—Go ahead. A If the questions of one-year period of residence, gainfully employed, if they are answered correctly or improper, I have a right to refuse the application, under Section 32.

Q Well, tell us what, in Section 32, gives you the right to refuse the application? A (Reading) Well,
238 unless one of its principal officers or its resident manager approved by the Board had been a resident.

Q You consider that to be your authority to refuse to accept this application, do you? A If it does not meet the requirements.

Q Well, is it not a fact that that has reference to the issuance of a license, and not the application? A Well, if they do not meet the requirements, how can they file an application?

Q Well, is there anything in there that says they cannot file an application? A No.

Q So, you do not have the right to refuse to take the

application, the only thing you have to do is to accept the application and send it to the Board? A Well, I would not accept the application, I would send it to the Board.

Q By what authority? A Because the Board has instructed us not to accept the application unless each question is properly answered.

Q Do you know under what authority the Board gives you such instructions? A Section 32 of the regulations.

MR. SHINBERG: That is all.

MR. CANFIELD: Plaintiff rests.

239 MR. SHINBERG: If your Honor please, at this point in the proceedings, I wish to renew my motion for judgment for the Defendants.

* * * *

245 When I asked Mr. Rudberg, he said yes, Mr. Richardson "represented me".

He was only the broker. They cannot now complain to Mr. Brown that they took the advice of some person who was not giving very good advice; they are grown people.

THE COURT: Didn't Mr. Brown stand right there and hear Mr. Richardson state that he would do that?

MR. SHINBERG: According to the testimony up to this time, he did.

THE COURT: And did he refute that?

MR. SHINBERG: He was not doing anything for Mr. Brown at that point.

THE COURT: He was selling his property, was he not?

MR. SHINBERG: He was selling his store.

THE COURT: Wasn't Mr. Richardson's statement an inducement to buy it?

MR. SHINBERG: Perhaps it was.

246 THE COURT: Then could Mr. Brown stand there and hear his agent say that and then later say that it was without his authority?

MR. SHINBERG: The question of authority never came into the picture, if Your Honor please.

THE COURT: Was it not necessary for him to say no, I do not agree with it?

MR. SHINBERG: I do not follow Your Honor's trend of thought. Does Your Honor now say that Mr. Brown, as seller of the liquor store was duty-bound to advise these people exactly what they should or should not do, or could or could not do in so far as an application for the liquor license is concerned?

I am trying to understand you.

THE COURT: I am asking you for your point of view.

MR. SHINBERG: Mr. Brown owed no duty to the purchasers other than to give them what they were paying for.

THE COURT: Suppose Mr. Brown had heard his agent say to these plaintiffs, there is \$150,000 worth of stock here?

MR. SHINBERG: Oh, definitely, then.

THE COURT: And Mr. Brown would just remain quiet?

MR. SHINBERG: Well, if Your Honor please, I am sure if that happened, Mr. Brown would have not remained quiet.

THE COURT: Suppose he heard Mr. Richardson say, I can take care of this matter of transferring the license, and Mr. Brown stands by?

MR. SHINBERG: Well, why should he say anything? He might have felt that Mr. Richardson could take care of it. There was a way they could take care of it. All they had to do was to form a corporation.

And Mr. Brown took for granted, as he had a right to, that they intended doing that.

Now, if Mr. Brown was interested in tricking somebody into buying the store, he certainly would not tell these people that they could not get a license in their name.

And our contention now is this: If Mr. Richardson—

THE COURT: That was just an inquiry.

MR. SHINBERG: I am interested, of course, in what prompts Your Honor's inquiry, and I do not know whether Your Honor is satisfied with the explanation so far.

THE COURT: I really think that you have to go on with your case.

The motion is overruled.

Testimony on Behalf of the Defendant

* * * *

David Brown

* * * *

248

Direct Examination

BY MR. SHINBERG:

Q Your full name is David Brown? A That is right.

Q Mr. Brown, what business are you in? A Real estate.

Q You are a builder, are you not? A Yes, sir.

* * * *

Q Did there come a time, Mr. Brown, when you had decided that you would sell your liquor store? A Yes, sir.

Q And as a result of that decision were you contacted by a man named Richardson? A That is right.

Q Now, up to that time, did you know Mr. Richardson? A I did not.

Q How did Mr. Richardson happen to come to
249 you? A He just came into my store and asked me, Would I sell the liquor store, he had got a buyer for it.

I said, Yes, I thought I would sell it.

* * * *

250 Q Who was it? A The first time was Mr. Rudberg himself.

Q Which Mr. Rudberg? A Harry Rudberg.

Q The one that is sitting in back of the courtroom?

A Yes.

THE COURT: Let the record show that he points out Harry.

* * * *

Q What happened at that time? A He showed him the store. It was after quitting time, after we closed the store. He looked it over and I told him what the price is, and he told me, "You will see me again".

* * * *

251 Q With Mr. Harry Rudberg? A Yes, Harry Rudberg, and O'Neill, if I am not mistaken.

* * * *

253 Q Who was present on that occasion? A Me, and Mr. O'Neill and Mr. Rudberg and Richardson.

Q Will you tell us the conversation that took place, what you said, what they said? A The conversation was the same thing; I told them I wanted \$35,000 cash and dollar for dollar for stock.

Q Was there any conversation about the deposit? A Yes. I told them they would have to give me \$5,000 deposit.

Q Had they indicated any amount that they were willing to give you? A I think they told me they would give me \$2,000. I told them, this is a big proposition, \$2,000 would not be enough.

Q Was there any conversation on that occasion with respect to the liquor license? A No. I think I told them at that time about the liquor license—Yes, I told them.

Q What did you tell them? A I told them they are not residents of the District of Columbia and they will have to get somebody or make corporation.

* * * *

254 Q What did they say when you told them that?

A They say they will take care of that.

Q Did they tell you how? A Oh, they did not tell me how.

* * * *

255 Q Now, on that occasion was there any conversation concerning the question of the liquor license?

A Yes, Mr. Abrams explained again and they say they knew all about it, they know what they are doing.

Q When you say Mr. Abrams explained again, what do you mean by that? A He told them about the license; they will have to have a corporation.

256 They say they knew all about it, they will take care of it.

Q Did you hear Mr. Richardson tell them that he would take care of that for them? A No.

Q Did you hear Mr. Richardson tell them he would take care of that for them on any previous occasion? A No, I did not know anything about that.

Q Was there any conversation with respect to their having a lawyer present to represent them? A Yes, Mr. Abrams told them to have a lawyer, and they say they cannot get their lawyer now, but they think Mr. Brown is honest and they think it is all right to prepare the things now. Mr. O'Neill expressed it.

Q Did Mr. Abrams go ahead and prepare the contract? A That is right.

Q After the contract was prepared, did everybody read it before signing it? A Yes, each one had a copy.

Q Did you read it? A Yes.

Q Now, Mr. Brown, I ask you this question: When you read the contract and didn't find anything in the contract about a corporation, did that mean anything to you?

A I did not know much about the contract; I left
257 it all to Mr. Abrams. He knew what he was doing.

Q Was it your understanding the purchasers

would form a corporation or do something which will enable them to obtain a liquor license in the District of Columbia? A Yes.

* * * *

Q When is the first time that you found out that the purchasers had not, in some way, made application for transfer of license? A I think within three or four weeks later, we did not hear from them, I told Mr. Abrams to write them a letter asking what they did about it.

Q Well, as a result of that letter did you get any information? A Mr. Abrams told me after they asked him for the deposit back, they backed out.

Q Did Mr. Abrams tell you why they wanted to back out? A No.

Q Did they ever tell you why? A No. I never talked to them after that.

* * * *

258 Q I say, do you now know why they did not go through with it? A I do not know why.

Q You still do not know? A I do not know why.

Q If they had formed a corporation for the issuance of the license, would you have cooperated with them? A Certainly.

* * * *

Q You employed Mr. Richardson to sell this store for you? A Well, he came in the store and he told me he had gotten a buyer and I told him he can sell it for the price which I am asking for it. I did not know him before. I never knew him.

259 Q Well, did you authorize him to do anything other than sell your store for you? A No, sir; no.

* * * *

262

Cross Examination

BY MR. SCHWARTZ:

265 Q So, on the first occasion of your having seen Mr. Richardson, he wanted you to sign a listing with him; is that correct? A Yes, sir.

Q And did he show you his listing? A No.

Q Your answer is no? A No.

Q When he asked you to sign it, he simply asked you to sign a listing without handing you anything to sign; is that right? A Yes, sir.

* * * *

266 Q You say you did not pay him any attention. You did tell him the price? A Yes.

Q And the amount of the good will and the amount of the stock? A Yes.

Q And did you discuss the lease with him at that time? A No.

Q Did he ask you about the lease? A He asked me how much rent I paid.

Q And did you tell him? A \$500.

Q And how long did the lease have to run? A 4½ years.

Q And you told him this on the first occasion? A Yes, sir.

Q But still your testimony is that you paid no
267 attention to him. Is that correct? A No.

Q You mean that is your testimony or that you did not pay any attention to him? A No, I did not pay any attention because he is not the only one to come in.

Q Did you authorize him to advertise your store? A No.

Q Do you know he did advertise your store? A No.

Q Well, don't you know as a matter of fact that he did advertise your store?

MR. SHINBERG: Just a minute. Your Honor, I have been waiting to see what Mr. Schwartz wanted to bring

out but at this time I would like to register an objection, because I do not see where we are accomplishing anything. There is no question Mr. Richardson was the broker who finally concluded the sale. It is contained in the agreement.

THE COURT: He is trying to show he was the agent of Mr. Brown.

MR. SHINBERG: Well, we admit Mr. Richardson was the agent for selling the store.

MR. CANFIELD: If you stipulate that, we won't ask any more questions on that.

MR. SHINBERG: We will stipulate he was Mr. Brown's agent for the purpose of selling this liquor store.

268 MR. SCHWARTZ: Very well.

* * * *

269 Q Told you what? A That he wanted to buy the store. And he told me he is an out-of-town man, and I told him he could not buy—

Q Wait a minute. Who told you he wanted to buy? A Richardson.

Q In Rudberg's presence? A Yes. He told me he is an out-of-town man. I explained he cannot buy here because he has got to live a year in Washington.

Q What did Richardson say about that? A He said he explained to the man the same way.

* * * *

270 Q What else happened on that day? A Well, then they went away, and within the next two weeks I think Mr. O'Neill came down with Israel to my office.

Q Now, how was that appointment made? A Mr. Richardson called me and told me these buyers are in and want to buy the place.

Q What happened then? A Then they came over to the office and I told them the same thing. They asked me about the price and I told them the way I told Mr. Harry before.

* * * *

273 Q What happened when the accountant came in?

A When the accountant came in I took him into the back of the store. I showed him all the bills, the book which I am checking in every day, but I told him I could not show him all the books because he did not buy the store.

Q As I understand your testimony, you showed him the bills of wholesalers that you had on the premises showing the amount of liquor you buy? A Yes, and the Day Book which I am checking in every day.

Q You also showed them the book which indicated your daily receipts? A Yes, sir.

Q Did you give them any other information about your business? A No.

Q Why not, Mr. Brown? A Because I told them they did not buy the place yet, and I cannot show them my business, and they did not buy it yet.

Q All right. Now, on this occasion which you are now telling us about, how much was that before August 17th, how many days prior to August 17th?

* * * *

276 Q You testified on your direct examination yesterday as follows:

"I told them that they were not residents and that they would have to get someone's name to put the store in, or make a corporation."

Do you recall having testified to that? A That is right.

Q Now, will you tell the Court please, what you meant by that? A I mean they cannot buy the store in their name because they are not residents.

Q All right. Now, when you told them they would have to get someone whose name they could put the store in, what did you mean by that? A Well, I told them they could get my manager in the store, to make the corporation and put him as the name.

Q Mr. Brown, yesterday your statement was in two

parts, you said, "I told them they were not residents and that they would have to get someone whose name they could put the store in, or make a corporation?" A That is right.

Q Now, what did you mean by that?

277 Didn't you mean as a matter of fact they would have to buy this store and put it in someone's name other than their own? A I meant they cannot buy it in their name because they have to have either a corporation or someone who is a resident.

Q But you also meant that they should put the store in someone's name who was not buying it? A No, I did not mean that.

Q Well, that is what you said. A Well, if that is what I said, I did not mean it that way.

Q Now, is it not a fact that on one occasion you had a conversation with these men and told them they should put the store in some one's name other than their own? A No, sir.

Q That never happened? A No, sir.

Q Is it not a fact, Mr. Brown, that prior to the time you ever saw the Rudbergs or O'Neill, that you were told by Mr. Richardson, your agent, that these men were from out of town? A Yes, Mr. Richardson told me these men were from out of town.

Q That is the first time you ever saw them, is it not? A The first time is when he brought the man over.

* * * *

280 A After he introduced him to me.

Q Now, how long did you have a liquor license, Mr. Brown? A I had a liquor license for ten months, altogether.

Q Showing the witness Plaintiffs' No. 4, you signed the application for your liquor license similar to the one I hand you, did you not? A Yes, I suppose so.

Q You know you did, do you not, Mr. Brown? A Yes.

Q And you are familiar with the questions in this application, are you not? A Yes.

Q You remember these questions very well? A Yes.

Q And do you recall a question No. 9-A on page 6 which says, "Is the applicant the true and actual owner of the business for which the license is desired?"

Do you recall that question? A Yes.

Q And do you also recall question 9-B, "Does the Applicant intend to carry on such business for himself and not as the agent of any other individual, partnership, association or corporation"? A That is right

281 Q Well, you knew, did you not, Mr. Brown, that if such an arrangement had been carried through, namely, if the brother-in-law of these men had taken the license in his name, that the person who had signed this application would have been swearing to a falsehood, did you not?

You can answer that yes or no and then explain it to the Court? A Yes.

Q But still that was discussed with your Broker, Mr. Richardson, your agent for the sale of this store, and you were satisfied with that; is not that correct? A Satisfied about what?

Q You interposed no objection to the suggestion that one of these men take this license in his name, did you? A No, not when they are not residents.

Q You recall the name of Mr. Selis, do you not? A Yes.

Q And you know that a plan was suggested, either by you or your agent, Mr. Richardson— A It was not suggested by me.

Q Well, was it suggested by Mr. Richardson? A I do not know.

Q Do you recall in this deposition I just read
282 to you it was suggested one of these men take the license in his name, Mr. Selis? A I do not know whether it would be Mr. Selis or a corporation. I do not know anything about that.

Q Well, Mr. Brown, you knew, did you not, that there had been some talk by someone, conceding for the moment that it was not you, you knew, did you not, that there had been some talk by someone that, very well, these men are from out of town, let them take the license in the name of their brother-in-law? Did not that happen? A Not to me. I was not interested in that at all. I only explained they could not get the license in their name. I was interested that they go legally, which is all they have got to do.

* * * *

285 Q Well, Mr. Brown, being very frank about it, you know the only thing you signed in this whole transaction was the agreement itself? A That is what I think.

Q So you know no effort was made to transfer
286 this license, and you knew immediately no effort was made to transfer this license, did you not? A Well, I do not know what happened after the signing of the contract.

Q And was not there an interim between the time you signed the agreement and the time you say you first learned there was something wrong, that there was some talk that if this proposed plan were carried through that everybody would be committing perjury? A I did not know anything about that.

Q You did not know anything about that? A No, sir.

Q Now, you also testified yesterday, "I would have cooperated with them if they had formed a corporation".

What did you mean by that? A If they would form a corporation I would sign over legally, I would take the notes for the corporation, whatever we would have to do.

* * * *

287 Q And do you mean to tell this Court, Mr. Brown, that you would have been satisfied with the notes of a corporation securing this deferred purchase money? A Yes, sir.

* * * *

Q But I still want to know whether you, as a business man, as a real estate man for 17 years in the District of Columbia, would have been satisfied to accept the note of this proposed corporation to secure this deferred purchase money on this store. That is not a fact, is it? A Why not?

Q I am asking the questions? A I would.

Q I would? A I would have been satisfied.

* * * *

288 Q And was there ever any question raised about the corporation accepting the responsibility for this lease? A No, I do not think so. Because I knew they would transfer the lease.

Q You knew they would transfer the lease to the corporation? A Yes.

Q Not to an individual? A It would not make any difference whether it was an individual or corporation, they would transfer the lease.

* * * *

291 Q Was there any conversation at that time about these men not being able to get a liquor license, because they were from out of town? A I think Mr. Abrams told him at that time.

Q Did he or did he not? A Yes, he did.

Q Well, there was conversation at that time about their being unable to get a liquor license? A In their names.

* * * *

299

Redirect Examination

BY MR. SHINBERG:

Q Did you employ Mr. Richardson to do anything for you other than to sell your liquor store? A No, sir.

Q Now, Mr. Brown, are you an attorney? A No, sir.

Q A member of the bar of any court? A No, sir.

Q You are not a practicing lawyer, are you? A No, sir.

* * * *

300 Q Now, Mr. Schwartz asked you on cross-examination a question concerning the period of time subsequent to the signing of this contract before you found out that the purchasers did not intend to go through with the deal. And I think your answer was about three weeks later. A Yes, something like that.

Q Now, my question to you is this: Did you have any knowledge at that time how long it would take these people to form a corporation? A No, I did not.

Q Do you now know how long it takes to form a corporation? A No, I do not.

* * * *

301 Q Well, did you have any knowledge of how long it would take these people to put into effect the program involving the transfer of the liquor license? A Well, I figure about a month or five weeks or something like that.

Q When you say a month or five weeks, what do you mean? A That it takes time to transfer the license.

Q Was that your previous experience when you purchased the store? A I think it was, yes.

Q You held the license how long? A Ten months.

Q Had you had a license prior to that time? A No.

Q Have you had one since that time? A No.

Q Did you have a manager in the store who worked with you? A Yes.

* * * *

* * * *

Direct Examination

BY MR. SHINBERG:

Q Will you state your full name, please, Mr.
303 Richardson? A Guy Richardson.

Q You know Mr. Brown here? A Yes, sir.

Do you know these two gentlemen sitting over here?

A Yes, sir.

Q The one in the far corner is Mr. O'Neill. A And the other is Mr. Israel Rudberg.

Q Now, Mr. Richardson, directing your attention to some time in July or August of 1945, did you have occasion to go into Mr. Brown's liquor store on New York Avenue, then known as Lessner's? A I did.

Q Now, speak loud and speak plainly. Now, on that occasion, did you have any conversation with Mr. Brown concerning the proposed sale of his liquor store? A I did.

Q What did you tell Mr. Brown on that occasion concerning the proposed sale? A I asked him if he wanted to sell the liquor store.

Q What did he tell you? A Well, he did.

Q Did he give you any details concerning the proposed sale? A He did.

Q Now, the basis of that information, did you tell him you had a prospective purchaser for that store?

* * * *

305 Q And I understand you did something afterwards A After I got permission from him on the business card, which is more or less the same as a listing as long as I had his signature, being that he would not sign the other one, I advertised it in the Star with some of the particulars, and Mr. Harry Rudberg of Philadelphia answered the ad.

* * * *

Q At that time were you a licensed broker? A I was a licensed business and real estate broker.

Q How long had you been a broker at the time of your first visit to Mr. Brown's store? A I had been a broker about six or seven months.

* * * *

307 Q Did he indicate to you that he had contacted you because of the ad you had inserted in the newspaper? A That is right.

Q Very well. Continue. A He said, "I would like to see the store very much." The first thing I told him, which every broker will tell a man—

Q Don't tell us what every broker will tell a man. A Well, it is customary.

308 I told him he is an out-of-towner and you have to have a year's residence to have a liquor license in Washington, and he said, "I know that".

Q Mr. Harry Rudberg? A That is right.

* * * *

310 Q All right. On that occasion, did the question of the liquor business and the requirements concerning
311 the liquor business come up in the discussion? A It did, sir.

Q Well, tell us how it came up. A I reminded him again, "You have to have a year's residence," and he said that was all right, that will all be taken care of, and he mentioned about a relative of his in town that was going in with him, and he was local and everything would be all right.

He said he was in the junk business.

Q Did he mention his name? A I believe it was Selis.

Q Mr. Selis? A Yes, sir.

Q Now, at that time what was your understanding concerning who was going to take part in the purchase of this business? A Mr. Israel Rudberg and Mr. Selis and Mr. O'Neill.

* * * *

312 Q Now, on that occasion, was there any further conversation concerning this store? A Only that everything would be all right and he definitely mentioned about a corporation.

Q Who mentioned about a corporation? A Harry Rudberg.

Q Well, did he give you any details about the corporation? A Well, he said Mr. Selis would be in on it and that everything would be all right.

* * * *

Q Now, Mr. Richardson, I ask you whether on that occasion, or the preceding occasion when you met with Mr. Harry Rudberg and when the question of the liquor license came up, did you or did you not tell Mr. Harry Rudberg that you would take care of everything, meaning yourself? A That I would take care of everything?

Q Pertaining to the liquor license. Did you or
313 did you not tell Mr. Harry Rudberg that? A No, I did not.

* * * *

314 A Well, when I took a thousand deposit, I took what we call a preliminary contract.

Q Well, is that a typewritten contract or is it a printed form? A It is a regular printed form and I typed it out and Mr. Harry Rudberg signed it, and I signed it.

Q Is that what is commonly known among brokers as a binder? A That is right.

Q And would Mr. Brown sign it? A No, he said there was not enough deposit on it.

Q Now, getting back to the meeting at Mr. Abrams' office, tell us about it. A Well, Mr. Abrams explained to them very thoroughly about having to be
315 a resident to get a license, and they said they knew all about that.

* * * *

Q What else was said by them and what else was said by anyone? A The first thing he told them was I would suggest that you get an attorney to represent you here, and Mr. O'Neill said, We do not need an attorney, we know what we are doing, and we are dealing with Mr. Brown and he looks like a real honest man, and we want no attorneys, we are dealing with Mr. Brown. Everything is all right.

And Mr. Abrams said, "Are you sure?"

He said, "We know what we are doing." Mr. Abrams told them that they are out-of-towners and they could not get a license, and they said, well, we have arranged everything.

Q Who said, "We have arranged everything?" A Mr. O'Neill was talking to the attorney, and Mr. Israel Rudberg.

* * * *

317 Q Was there any discussion on that occasion about an attorney who would represent these men?

318 A Yes.

Q What conversation was there? A Why, I told them—

Q When you say "them," who do you mean? A I told Mr. Rudberg and Mr. O'Neill that they should have an attorney.

* * * *

Q And you told them— A Well, I suggested an attorney I thought had a lot of experience in that type of work.

Q And who was that, Mr. Richardson? A Albert Levin— No, Alvin Levin, the late Alvin Levin. He died since then.

Q What did you tell them? A Well, I told them he was experienced in liquor licenses and would be a good man to represent them, and they said they would like to meet him.

319 Q Who said they would like to meet him? A
Mr. Rudberg and Mr. O'Neill.

Q Was any arrangement made? A Yes I called Mr. Levin.

Q And did you take them up to Mr. Levin's office?
A I did, and Mr. Levin went into discussion with them and explained everything to them and told them, if they wanted him to represent them, he would be glad to.

Q On that occasion, who was present in Mr. Levin's office? A Mr. O'Neill, Mr. Israel Rudberg, and I am not sure whether Harry Rudberg was there. I think he was up in the office, too; I am not sure.

MR. CANFIELD: This was August 17th, the day the contract was signed?

THE WITNESS: This was before the contract was signed.

MR. CANFIELD: Oh, before the contract was signed?

THE WITNESS: Yes.

* * *

320 Q Did they employ Mr. Levin? A They said they would let him know.

Q Who said they would let him know? A Mr. O'Neill and Mr. Israel Rudberg. They did not employ him at that time.

* * *

Q Was anything said at that time about the necessity for letting Mr. Brown know whether they were or were not going to buy the store? A Yes, they told me to tell Mr. Brown they definitely were taking it.

* * *

321 I told Mr. Brown they were coming down, I said they definitely want it, and he said, if you are sure they want it, and can form a corporation, and get it like they say they do, I will hold it. Which they did.

Q Now, did they furnish you any evidence of the fact

that the banks in Shenandoah were closed because of the end of the war with Japan at that time? A That is right, sir.

Q Was that at your request? A No, as I recollect now, that is one of the reasons they did not put up a deposit the first time they were there; they said the banks were closed then and they could not get the money but they would come down again.

Q All right. A I believe it was a week later that they came down, or less than a week. But they said the banks were closed, and they could not get that \$5,000, otherwise, they would have it there.

Q Well, did they eventually bring you evidence that the banks were closed, a letter, and show you that the banks were closed? A Yes, sir; they did.

322 Q I show you Plaintiffs' Exhibit 3 and ask you if they showed that? A That is right, sir.

* * * *

Q Well, whose idea was it, the obtaining of this letter? A Their own idea.

Q Was it solicited by you? A No, sir. They brought that down as evidence they were still interested in the store, and that they definitely wanted it.

* * * *

324 Q Tell us what happened on that occasion? A

On that occasion, he told them again they should have an attorney and they told him they did not need an attorney at that time, that they were well satisfied with the store, well satisfied with the deal, and they wanted to go right through with it.

Q Now, was there any discussion concerning the formation of the corporation? A Yes.

Q Tell us what the discussion was.

A Well, Mr. Abrams told them again about being out-of-towners and they said that was all taken care of, they told him that a relative, I believe he said an uncle,

325 Mr. Selis, had been in the junk business, was very prominent in town, a local resident, and that he would go in with them and that everything would be all right, they were forming a corporation together.

Q Did you at that time say that you would fix everything for them? A I did not.

Q Did you know in detail what they intended to do in so far as the license was concerned? A In detail, I did not.

Q Well, what did you think they were going to do? A I thought they were going to do what they said, go in a corporation with an uncle, Mr. Selis, and Mr. Harry Rudberg would work in the store; he was going to work in the store; they were going to be the backers, they were going to put up the money and Harry was going to run it and Mr. Selis was going to be in on it.

One thing more, may I add, they were going to retain the manager that was manager for Mr. Brown.

Q Well, how did you know that? A I knew that because they asked about him, and Mr. Brown said he was a very fine fellow, had been with him quite awhile and was very honest, and they said they might keep him.

326 Q As manager? A As manager.

Q Now, did Mr. Abrams proceed to dictate the contract? A Mr. Abrams told them, "Are you sure you do not want your attorney here?" They said "No". Mr. O'Neill repeated again, "Look, as long as we are dealing with Mr. Brown, we do not need an attorney." He said, "Make out the papers. Let us go on with this."

And he did.

Q Was anything said by Mr. O'Neill and Mr. Israel Rudberg to indicate that they were in a hurry to conclude the transaction? A Every time they came in they were in a hurry to get back because they both had business in Shenandoah and they wanted to get on with it; everything was all right, go ahead.

Q And did Mr. Abrams proceed to draw the contract?

A That is right, sir.

Q And when the contract was completed, were copies of it distributed to all those present? A That is right.

Q What happened after that, in Mr. Abrams' Office?
A After the money was put up?

Q No, copies of the contract were distributed? A Yes, sir.

327 Q Did everyone read it? A They were reading the contract and they signed it and Mr. Brown signed it and I believe I signed the contract myself. I am not sure of that—

* * * *

Q Now, Mr. Richardson, I ask you this question:
Were you employed by Mr. Brown to do anything
328 for him other than sell his liquor store?

MR. CANFIELD: We object, if the Court please. I think the facts draw the necessary conclusion for the Court.

THE COURT: Sustained.

BY MR. SHINBERG:

Q Well, let me ask you this question: Did you do anything for Mr. Brown, other than arrange the sale of his liquor store?

MR. CANFIELD: Objection.

THE COURT: Sustained.

* * * *

Cross Examination

BY MR. CANFIELD:

Q Mr. Richardson, how long have you lived in the District of Columbia? That is, prior to the time you embarked in the business of a business broker? A Since 1942.

Q Where had you come from? A Where had I come from?

Q Where did you live before you came here? A New York.

Q Were you in the real estate business out there,
329 brokerage business up there? A No, sir.

Q What business had you been in? A Buying and selling and show business.

Q Buying and selling what? A Buying and selling sweaters.

Q In the garment business? A Yes, sir.

Q And show business? A That is right.

Q Were you on the stage? A I was in vaudeville for many years.

Q Now, directing your attention to the year 1945, I understand that you consulted Mr. Brown about the sale of the store? A Yes, sir.

* * * *

332 Q At the time he signed the card, he told you the price, the terms and conditions of sale, didn't he?

A That is right.

Q And evidenced a desire to sell his store, did he not?

A That is right.

Q Made it clear to you he wanted to sell his store?

A That is right.

Q You advertised the store for sale in the Evening Star? A Yes, sir.

Q Did you put in the terms and conditions of sale?

333 A I do not remember whether I did.

Q As a result of that ad, Harry Rudberg contacted you by letter, did he not? A He did.

* * * *

334 Q Now, what did you do with Harry on the occasion of the visit? Did you take him over and show him the store? A I did.

Q Did you take him in? A I did.

Q Did you introduce him to Mr. Brown? A Yes.

Q What did Mr. Brown say? A Mr. Brown showed

him through the store and explained to him very definitely— When he told him he was from Philadelphia, he told him “You cannot own a liquor store in Washington unless you lived here at least a year”. He said, “Yes, I know that.” He said, “What do you intend to do?”

He said, “Right now, I am going back. We will take the store, and we know just what we are going to do, we have a relative here, but right now I want to go back and give the details to my brother, because Harry was not to be interested in the store.” He was to work there.

Q You mean Harry was to have no interest in the business? A Not as I understood it. He was to work
335 there for his brother.

* * * *

Q Did you take a deposit from him the first time?

A Not the first time.

Q When is the first time you took a deposit?

336 A Not until he came down again. He called me on the telephone and told me he was going down, and the next time he came down, he told me they were very much interested in the store, and his brother liked the idea and they were going to take it.

I told him, “Well, a store like that, I have not the exclusive listing and there are other brokers; if you are interested, you will have to put up some kind of deposit to show you really want it, otherwise, someone else will sell it, and I will lose my commission.”

Q How much deposit did you ask for? A \$5,000.

Q How much did you get? A A thousand.

Q A thousand dollars? A Yes, sir.

Q Will you examine Plaintiffs' Exhibit No. 1 and tell me whose handwriting it is. A That is mine.

The first time he came down he gave me a \$10 deposit to show good will.

Q That is what I asked you. A Well, I forgot that. Just to show his good faith.

337 Q Didn't you ask him for a hundred dollars? A
Is it not a fact that I did what?

Q Is it not a fact that you asked him for a hundred?
A I asked him for a thousand. I wanted something to show he meant business, not taking up my time.

He kept calling me from Philadelphia and coming in and I had to take him over there, waste a lot of time for nothing. There are a lot of people who come up to these brokers' offices that just want to look. He said, "We want the store; everything is all right." Well, it is very customary for a broker to ask for some kind of deposit to show the man's good will. That is something that slipped my mind.

He said, "To show you I mean business, I will put up a ten dollar deposit".

Q A ten dollar deposit on a \$75,000 deal? A Just to show he was not a floater.

Q Didn't you ask him for \$100? A I asked him for more than \$100.

Q Did there not come a time when you asked him for a hundred dollars? A That is right.

Q You started with a thousand? A Yes.

Q And then came down to a hundred? A Yes, sir.

338 Q And you took ten? A Yes, just to show his good will.

Q Now, is not there any reason why you could not take ten dollars on the first visit, because he and "Izzy" were interested, and you would take it on the second visit? A I will have to rectify that. That ten dollars was taken on the first visit.

Q From the beginning it was your understanding Harry was to have no interest in the business; he was only going to work in the store? A He was an agent for his brother.

Q He was to work in the store? A That is what he told me.

Q He was to have no part of the ownership? A That I am not sure. Whether he was to have an ownership, I am not sure.

Q Didn't you testify on direct, that Izzy and O'Neill were to take the store and Harry was to work there? A That is right.

Q Now, what is the fact? A The fact is, they were going to hire a local man as manager, they were going to keep that man Mr. Brown had. That is what he told me.

Q Was this all said at the first visit? A That I cannot recollect.

339 Q Is it not true that at the first visit, Harry Rudberg made it clear that he was to be the potential buyer? A No.

Q You deny that? A Yes.

Q Now, at that time was anything said about transferring the liquor license? A The first visit, yes.

Q What was said? A I told him that not being a resident of the District of Columbia, he should or would not have a license, or his brother could not have the license in the District of Columbia. He said he knew that.

Q And you knew it? A Yes, sir.

Q So, from the very first time you consulted anybody, it was understood these men could not qualify for a license? A That is right; otherwise, a broker would be wasting his time.

* * * *

340 Q You sent the deposit back? A Yes, or gave it to him the next time he came, I am not sure.

But he got his ten dollars back.

Q You did not give him his ten dollars back
341 until he gave you the thousand dollars, did you?

A Let me recollect now. (Pausing)

When he came in the first thing I did, I said, "Look, I do not want you to think you left \$10 here".

He said, "As a matter of fact, you can keep that."

I said, "No, no." "Here is the card, and here is your \$10 back."

Q Now, at this time did you understand Selis was to loan Harry any money? A No, I did not know the details.

Q Was it discussed that Harry was going to borrow some money from his brother-in-law? A No.

Q When you took the \$10, you had him sign a form? A I had him sign a contract.

Q And the contract was running from Harry Rudberg, the Purchaser? A He signed it, yes.

Q As the purchaser? A As agent for his brother.

Q Did he sign as agent? A I do not recollect. But he was agent for his brother.

Q Now, where is that contract? A I do not
342 know whether I have it or not. I can see whether I have it or not. Excuse me. We brought that contract into Mr. Abrams and that contract was destroyed.

Q Who destroyed it? A I believe I destroyed it.

Q When? A In Mr. Abrams' Office, when he made out the other contract.

Q You mean the day he made out the \$5,000— A I destroyed the other contract.

Q In the presence of these people? A I believe so.

Q Did they understand you were tearing up the previously-executed instrument? A Certainly. I gave them back the thousand-dollar check and tore up the contract.

Q When did you give him back the thousand-dollar check? A The next time he came down.

Q Whom did you give the check to? A I gave the check to Mr. Harry Rudberg.

Q When? A Do you expect me to remember the exact date?

Q When, with reference to the date the contract
343 was executed? A August 17th the contract was consummated.

Q All right. A That is the date I gave him back the check.

Q Where did you give him the check? A I do not know where I gave it to him. You ask him; he will tell you he got it.

Q Was not that check turned over to Mr. Abrams as part of the \$5,000? A I do not remember that.

Q Isn't that part of the \$5,000? A I do not remember.

Q Now, from the time that Harry came on the second visit, how long was it before you met Israel? A About a week or ten days later.

Q On that occasion Mr. O'Neill came, too? A Yes, sir.

* * * *

346 A I do know he wanted \$5,000 before he would go into discussion about selling the business. He did want \$5,000 deposit.

Q And wasn't there a discussion about seeing the books to verify the representation? A Well, there must have been because they brought in an accountant, but I did not hear it.

Q Well, how do you know it? A Because they brought in an accountant.

Q Is it not a fact that the accountant had been brought down the week before by Harry Rudberg and Mr. Brown in your presence, let him see the bills? A I do not remember that.

* * * *

347 Q Now, I direct your attention again to the conference in Mr. Brown's office. Were Israel, O'Neill and Mr. Brown present? A On what occasion was that?

Q The occasion in Mr. Brown's office. Didn't Mr. Brown at that time, after rejecting the two thousand dollars, indicate clearly to them that if they would put up the \$5,000, the negotiations would continue? A That is right. And they said the banks were closed at that time.

348 Q The banks were closed at that time? A The banks were closed at that time on account of the holiday. They wanted to put up the \$5,000 but they did not have the money.

* * * *

350 Q Now, let us get this clear. You, yourself took Mr. Rudberg, Izzy and Mr. O'Neill to see Mr. Levin? A I took them to see Mr. Levin after they put up that \$5,000, that same day, same afternoon, when we left Abrams' office, we went to Mr. Levin's.

I called Mr. Levin and he said Bring them up.

Q Then if you testified on direct that you had brought them to Levin's office before they signed the contract, you were in error? A I was. I am positive it was the same day after they signed the contract, and I asked them, "Have you got attorney that is experienced in corporation matters?"

Because they told me they were going to form a corporation; and they said, "No." I said, "Well, I know a man who would be qualified," and they asked me to take them up there, and I did introduce them to Mr. Levin.

Q Then that part of your testimony on direct, that you took them to Levin's office to discuss a corporation, did not take place until after the agreement of the 17th
351 was executed? A It was after the contract was signed on that same day. They were interested in an attorney that could handle their case, but after they left there they were not sure whether they wanted him. As a matter of fact, I asked them, "Are you going to retain Mr. Levin?" and he said no.

Mr. O'Neill told me he knew Mr. Canfield, meaning yourself, from his home town, whom he thought would handle the thing.

Q Did O'Neill go with you to Levin's office? A Yes, sir.

Q You are sure of that? A Yes.

Q You could not be mistaken? A Well, I could be mistaken, it is two years ago, but I am pretty sure he was there.

Q Is it not a fact that O'Neill refused to go to Levin's office and Rudberg only went up with you? A No, sir; I am pretty sure the two of them were there.

Q Were you in Levin's office on the 17th after the contract was executed? A Yes, sir.

Q And you were pretty sure the two of them
352 were there? A Yes, sir.

Q Tell me what O'Neill said. A I do not recall what O'Neill said, but I remember what Levin said.

Q All right. Tell us about it. A Levin told them what had to happen to have a license in the District of Columbia, and they talked about it quite a bit and Levin said, "If you want me to represent you, I will be glad to."

Just exactly what happened up there I do not remember. I do know they talked about the store.

Q Did you hear Mr. Levin say if they did not take the corporation, that the store could be put in another name, for a year? A No, sir.

Q Was my name discussed in Levin's office? A I do not think so.

Q Was Selis' name discussed in Levin's office? A Yes, sir.

Q Was it understood that Selis was to be a participant in this when you were in Levin's office? A Yes, sir.

Q Was Harry Rudberg supposed to be in it? A Was Harry Rudberg?

352A Q In the office? A He was in the business; yes, sir.

Q Let me show you this paper, Plaintiffs' Exhibit No. 2 for identification. Did you ever see that before? A No, sir; I did not see this.

Q You never saw that? A No, sir.

Q Is it not a fact that on August 10th—August 17, when Mr. Israel Rudberg and O'Neill came to town, they

told you that Harry could not get the money from his brother-in-law, and they showed you this telegram? A No, sir.

Q Nothing like that occurred? A No, sir.

Q Now, I want you to go back again to the time after you left Mr. Brown's office. I jumped too far ahead.

From that time on, did you call Mr. Israel Rudberg in Shenandoah? A I believe I did, sir. One time I believe I did.

Q You were putting the pressure on him to complete this deal, were you not? A No, sir. All I said was, I talked to Mr. Brown and Mr. Brown wants to know one way or the other, because he had a chance to sell the store by this Kogod and Bookoff, which eventually, I believe he did.

* * * *

353 Q Did Harry ever call you after the 10th of August? A He called me on the 'phone so many times to assure me that they wanted it, and please tell Mr. Brown not to sell it to anyone else, hold that store, that—we know about the corporation, my uncle is in it.

Q Who was the uncle? A He was high-pressuring me to hold the store, I was not high-pressuring him to sell it.

Q You had a commission tied up, did you not? 354 A I certainly did. We do not work for nothing.

Q How much? A 5 per cent.

Q Now, can you tell how many times you called Israel Rudberg? A I am not sure of that, but I am sure of once when I asked him, "Are you taking it or are you not?" Because Mr. Brown told me he had another party interested and if they do not want to take it, they would sell it through another broker.

Q Now, wasn't August 15th fixed as the date on which the contract would be consummated? A I do not recall that.

Q Did you not call them on or about the 15th to make

sure they would be in Washington that day? A I do not recall.

Q Did they not tell you that they could not get the money because the Armistice had occurred, and the Governor of Pennsylvania had closed the banks for two days? Didn't they tell you that? A I do not remember that.

Q Was there a discussion about the banks closing? A No.

Q Did you know about this letter? A That is why they did not bring the money.

355 Q Is it not a fact that on the 15th you called Israel Rudberg and suggested you would take an airplane to Harrisburg and meet them halfway to get the money? A No, sir. I do not recall anything like that.

Q Do you deny that that occurred? A I do not remember that. I do not remember saying that to him or them about an airplane.

Q Now, is it not a fact that when they came to Washington on the 17th of August, O'Neill had a statement on the letterhead of the Miners National Bank or Shenandoah and Rudberg had that, which I hand you, Plaintiffs' No. 3?

A Which Rudberg is this, Harry or Israel?

Q Israel. A What was your question again? What are you trying to prove?

Q Read it.

(Question read.)

Q Read the letter. A (Examines paper) What was the question again?

(Question read.)

A I only saw one letter to the effect that the banks were closed and that was the other one.

Q That was the O'Neill letter? A Yes, sir. I do not remember seeing this one.

Q You do not recall seeing this one before, Plaintiffs' No. 3? A I do not think so.

Q See on this occasion if you were not also

shown this telegram, Plaintiffs' No. 2? A They did not show it to me.

Q Had you ever seen it before today? A I do not think I did.

* * * *

357 Q How was my name brought up? A Mr. O'Neill said he knew Mr. Canfield, he was from his home town, and he was not sure but he thought maybe you would handle it.

Q Handle what? A That you would handle the corporation matters.

Q Mr. Canfield was to handle the corporation matters? A He was going to get in touch with you.

Q Isn't it a fact that when you got to Mr. Abrams' office, he was not there first, you were there, and he came in later? A Who was that?

Q Mr. Abrams.

* * * *

358 Q Then did Mr. Abrams suggest it would be better if they had their own attorney there?

* * * *

A That is right.

Q And as I understand it from your direct, you said, Mr. O'Neill particularly said, "We do not need an attorney, we know all about this, and it isn't necessary for us to have it?" A To be exact, Mr. Canfield, he said, "We do not need an attorney now. As long as we are dealing with Mr. Brown, we do not need an attorney. Everything is all right."

He had all the confidence in the world in Mr. Brown that everything was all right.

Q He had all the confidence in the world in you, too, did he not? A After I introduced him I was more or less of a bystander. The business was going on
359 with Mr. O'Neill, Mr. Rudberg, Mr. Brown and Mr. Abrams. I do not know how much confidence he had in

me. I introduced him to the deal and they were well-satisfied. Why they changed their mind I never did find out.

Q While they were in that conference there, you went out and called Levin, did you not? A Oh, no. I called Levin after we came out. I said, "Do you want an attorney that is very, very well versed in corporation matters"? And they said, yes, we would like to meet him.

And I called Mr. Levin on the 'phone and explained the whole detail and he said, "Bring them up, I will be glad to meet them."

Q Where did you call Mr. Levin from? A From a 'phone booth.

Q Where was the booth? A I believe the booth was in a drug store.

Q Where? A When we came down from the office it was 7th Street, and I believe there is a drugstore right across the street from the Commerce Building, and I called him from a 'phone booth.

Q You accompanied them to Levin's office? A Yes.

Q When they left Levin's office, where did they go? A I do not remember.

* * * *

363 Q Now, I asked you this morning about your telephoning Mr. Israel Rudberg on August 14th. I ask you whether or not this did not take place in the deposition:

"Question: Did you not tell Mr. Israel Rudberg in the conversation you had with him on August 14th, 1945, on the telephone, at which time you called him on the telephone, charges collect, 'If you are not here by 3 o'clock, August 15, the deal is off.' Did you tell Mr. Rudberg that?

364 "Answer: I do not remember putting it in those words.

"Question: What did you say?

"Answer: I told him his brother Harry said they would

be down here in a certain time limit; I think two weeks, and when were they coming.

"Question: Didn't you tell them Mr. Brown was furious?

"Answer: I do not remember.

"Question: That you were having trouble holding him in line?

"Answer: I do not remember.

"Question: How did you put it?

"Answer: I asked when they were coming down. He said they were getting the details together and he said he was going to get him—well, either Harry or Israel's brother-in-law, to go in, and he was going to get the license, and if that did not materialize, they had somebody else to form a corporation.

"Question: Now, Mr. Richardson, these men are from out of town, are they not?

"Answer: That is right.

"Question: You knew they were from out of town?

"Answer: That is right."

Do you remember making those answers? A I
365 do not remember exactly but if it was down there,
I must have made them.

Q You were in touch with Mr. Brown all during those conversations? A Yes.

Q Did you tell Mr. Brown they were to be down here the 15th of August to complete the deal? A I did. You see, Mr. Canfield, Mr. Brown was telling me another broker had a client, who was very interested in the deal, and he would have to know definitely, because the other broker kept bothering him, and every time he said that, I would tell them, so if they changed their mind, he could have the deal there. Mr. Brown wanted to sell his business and get back in the real estate business.

Q Didn't you discuss with them on the 14th the possibility of the banks being closed? A Did I discuss with them—with whom?

Q In the telephone conversation with Israel? A I do not remember that.

Q Did you call him on the 15th and ask him why he did not show up? A I did not remember calling him.

Q Is it not a fact that you called him on the 15th and they told you the banks were closed and they could not come down? A Possibly so.

366 Q And did you not tell them when you told Mr. Brown the banks were closed on the 15th and 16th Mr. Brown said it was a damned lie and they were not acting in good faith? Did you say that? A I do not remember that.

* * * *

BY MR. CANFIELD:

Q Did you tell them in the telephone conversation on the 15th that Mr. Brown said the banks here would be open, and he could not understand why the banks up there were not open? A I believe I did.

367 Q So, you and Mr. Brown did have a discussion about their not coming down on the 15th? A That is right. He wanted to know why they were not here. I called them and they told me the banks were closed and they would be down on the 17th.

Q And Mr. Brown could not understand why the banks were closed up there two days and here only one day? A I do not remember the exact words.

Q That is the substance of it, is it not? A That is right. The substance.

Q Now, I asked you this morning if you were present when the accountant came to Washington with Harry Rudberg to go over the accounts with Mr. Brown. You indicated you were not; is that so? A I do not remember. I do remember I saw the accountant twice.

Q Were you in the store on the occasion the accountant was in there and was permitted to see the bills. A Was I in the store?

Q Yes. A I do not know; he and Mr. Brown were having a discussion themselves. They more or less left me out of it. Whatever transpired between him and Mr. Brown—

* * * *

368 Q When did you first learn that Mr. Selis, Harry Rudberg's brother-in-law, was not interested in the deal? A I did not know anything about that. All I learned was they changed their minds. I do not know why.

* * * *

372 Q Did you suggest to Mr. Levin that you wanted to get "my attorney" up here? A He was my attorney.

Q I thought you were on the outs. A That is right. But he was my attorney. He was not my attorney at the time they were in the office. I let him close my deals;
373 he was my attorney.

* * * *

Redirect Examination

* * * *

374 BY MR. SHINBERG:

Q Now, Mr. Richardson, I direct your attention to page 92 of your deposition, and ask you whether this happened: You listen to this question first:

"Did you or did you not tell these men when there was a conversation about buying this license in someone else's name, that you would refer them to Mr. Levin, who in effect, was in control of the Liquor Control Board and could get them any kind of license they wanted?"

"Answer: That is definitely not true. Would you let me answer that?"

"Question: Yes, go ahead.

"Answer: They told me, they said, 'Now, Look, in case

Mr. Selis should change his mind and we go ahead
 375 and form a corporation, do you know a good attorney?' I said, 'Well, Mr. Levin handles a lot of liquor cases; why don't you go up to see him; he will take care about corporations' and they said, 'All right, we will.' "

Did that happen? A Yes. Mr. Levin was instrumental in getting me my liquor license. I believe he was a very good lawyer in anything dealing with corporations or liquor licenses.

* * * *

Recross Examination

BY MR. CANFIELD:

Q Now, when did that conversation occur, the part that Mr. Shinberg just interrogated you on? Was that before you went to Abrams' office, or when was it? A What conversation are you talking about?

Q "When they told me in case Mr. Selis should change his mind and we go ahead and form a corporation, do you know a good attorney?" When did that occur? A That occurred after they put up the \$5,000, to the best of my knowledge.

Q Do you mean the same day? A That is right; after we left there.

Q After you left Mr. Abrams' office? A Yes, sir.

376 Q So, up to the time you left Mr. Abrams' office, nothing was said about Selis not being in the deal?

A Not that I know of. They told me everything was all right, that their uncle or brother-in-law or whatever he was, was going in with them, and everything would be fine.

Now, the first time I heard about Selis would maybe change his mind was after they put up the \$5,000, and they said, "Do you know a good attorney?" And I told them about Levin.

* * * *

Thomas F. O'Neill

* * * *

Direct Examination

BY MR. CANFIELD:

Q Mr. O'Neill, were you ever in Mr. Levin's office? A I was never in Mr. Levin's office.

Q Did you ever meet Mr. Levin? A I never saw him.

Q Did you at any time tell Mr. Richardson that
377 you did not need a lawyer; you did not want a lawyer, and you were satisfied with Mr. Brown; he looked perfectly honest? Did you ever make a statement like that? Yes or no. A No.

Q Were you in Mr. Abrams' office at any time prior to August 17? A No, sir.

Q Did you ever know Mr. Abrams? A No, sir.

Q In Mr. Abrams' office was there a form, printed or typed agreement produced by Mr. Richardson and torn up in your presence? A No.

Q Did you ever see a written agreement in this transaction other than the one in suit? A No.

* * * *

Cross Examination

BY MR. SHINBERG:

Q Mr. O'Neill, you knew there had been an agreement signed by Harry Rudberg? A No.

Q You never knew about it? A No, sir.

Q Well, there could have been one without your
378 knowing about it, couldn't there? A Yes, sir.

Q Now, when you were in Mr. Abrams' office you say that you never told Mr. Abrams that you did not need a lawyer? A No, sir.

Q Let me ask you this, Mr. O'Neill, if you did not tell Mr. Abrams that you did not need a lawyer, why did you proceed to engage in a transaction and sign a contract for the purchase of the business involving some \$70,000 or \$75,000 without a lawyer? A I started an agreement I thought would be finished when my attorney, Mr. Canfield, was back in town.

Q Well, did you not read that contract before you signed it? A Yes.

* * * *

379

Israel Rudberg

* * * *

Direct Examination

BY MR. CANFIELD:

Q I forgot to ask Mr. O'Neill this question: I will ask you, Did you at any time go into a drugstore with Mr. Richardson while he made the telephone call, on August 17th? A No, sir.

Q Did O'Neill go to Levin's office with you? A No, sir.

Q Did Mr. O'Neill talk to Levin about the transaction? A No, sir.

Q When you were in Abrams' office, was there a form of agreement, typed or printed, produced by Richardson, torn up and destroyed? A No, sir.

380

Cross Examination

BY MR. SHINBERG:

Q Well, you know that your brother Harry did sign such an agreement, don't you? A No, sir.

Q Of course, you know that particular kind of agreement was used? A I do not know anything about a particular agreement.

Q The contract that is in evidence here is the only one you were ever called on to sign? A On the 17th.

Q No one ever asked you to sign any other contract? A No, sir.

Q And you never did sign any other contract? A No, sir.

Q The thousand dollar deposit that had been put up with Richardson was credited to you at the time of the signing of this contract, was it not? A Yes, sir.

Q And you and Mr. O'Neill put up an additional \$2,000 before? A Yes, sir.

Q So that made up the full five thousand? A Yes, sir.

* * * *

381

David Brown

* * * *

Direct Examination

* * * *

BY MR. SHINBERG:

Q Did you hear Mr. Abrams tell Mr. O'Neill that
382 he should have counsel of his own choice? A Yes, sir.

Q Did you hear Mr. O'Neill tell Abrams that he did not need an attorney, that as long as he was dealing with you, he did not need one? A That is exactly what he said.

* * * *

EXHIBITS

Pltf. 1

Filed Jan 2 1948, Harry M. Hull, Clerk

Peoples Life Ins. Bldg., 14th & H Sts., N. W.

CA—30,777
EX 0620

Guy Richardson

Licensed Business Broker

Recd. \$10.00 on liquor store at 15 & N. Y. Ave.

Guy Richardson

Pltf. 2

Filed Jan 2 1948, Harry M. Hull, Clerk

CA—30777

WESTERN UNION

TELEGRAM

WESTERN

UNION

A. N. Williams

President

Class of Service—This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

Symbols: DL=Day Letter; NL=Night Letter; LC=Deferred Cable; NLT=Cable Night Letter, Ship Radiogram.

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination.

PAR54 10=PHILADELPHIA PENN AUG 10 1250P

ISRAEL RUDBERG=

=310 WEST CHERRY ST SY=

AARON CALLED — IRVING DECIDED WAR ENDING PROPOSITION UNCERTAIN EVERYTHING CANCELLED=

HARRY. 130P.

Telephone No. 0814

Telephoned to Rudbg

Time 136PM

By B to be

Attempts

to

Deliver

Pltf. 3

Filed Jan 2 1948, Harry M. Hull, Clerk

CA—30777

THE MERCHANTS NATIONAL BANK

Shenandoah, Penna.

Organized 1891

E. H. Ratzburg,

Chairman

J. W. Hough, President

M. V. Monaghan,

Vice-President

P. C. Naylor, Cashier

Capital and Surplus \$600,000.00

Shenandoah, Penna.

August 17, 1945.

To Whom it May Concern:-

At the request of Mr. Rudberg, we state that the banks in Shenandoah, Pa. observed the two day holiday on Wednesday, August, 15th. & Thursday August, 16th.

Sincerely yours,

P. C. Naylor

Cashier.

No. 9742

BRIEF FOR APPELLANTS

United States Court of Appeals

DISTRICT OF COLUMBIA

DAVID BROWN and MORRIS ABBAMS,
Appellants,

vs.

ISRAEL RUDBERG and THOMAS F. O'NEILL,
Appellees.

Appeal from the District Court of the United States
for the District of Columbia

United States Court of Appeals
for the District of Columbia

FILED JUN 25 1948

Joseph W. Stewart

CLERK

LEON M. SHINBERG,
PHILIP SHINBERG,
JOSEPH LEVIN,

1331 G Street, N. W.,
Washington, D. C.,

Attorneys for Appellants.

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United States Court of Appeals

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Appellants,

VS.

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Appellees.

Appeal from the District Court of the United States
for the District of Columbia

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

The jurisdiction of the Court is based on the general jurisdiction of this Court as provided in Title 17, Section 101, D. C. Code, 1940; 41 Stat. 1312, Sec. 12.

This is an appeal from a Judgment of the District Court

of the United States for the District of Columbia, sitting without a jury, cancelling a written agreement and in favor of plaintiffs in the sum of \$5,000.00 against defendants, from which defendants noted an appeal.

STATEMENT OF THE CASE

In June 1945, appellant Brown was the owner of a retail liquor store in the District of Columbia. At that time he was contacted by one Guy Richardson, a licensed broker in the District of Columbia, concerning the possible sale of Brown's liquor store (App. pp. 114, 126). Brown authorized Richardson to bring him a purchaser and outlined the terms of sale (App. pp. 115, 126). Richardson advertised the store in a Washington newspaper and as a result was contacted by one Harry Rudberg, brother of appellee Israel Rudberg, (App. pp. 18, 19, 126). Harry Rudberg came to Washington and discussed the purchase of Brown's store with Richardson at which time Richardson outlined the terms of sale (App. pp. 19, 127). Richardson knew that Harry Rudberg was a non-resident of the District of Columbia and told him that he could not obtain a liquor license here as an individual because of his non-residence (App. pp. 26, 127 and 137). Harry Rudberg told Richardson that he knew all about the liquor license problem and would take care of it (App. pp. 28 and 127); and that in any event, one Selis, a relative of Harry Rudberg, who was a resident of the District of Columbia, and financially interested in the venture (App. pp. 20 and 28), would supply the necessary qualifications for the license (App. pp. 26, 27, 127 and 128). Richardson obtained a deposit from Harry Rudberg (App. pp. 19 and 23) and attempted to have a contract executed but Brown refused both the deposit, as insufficient, and the contract (App. p. 128) stating that the contract would have to be prepared by Brown's attorney, Abrams. Brown consistently refused to accept less than a \$5,000.00 deposit (App. pp. 80,

82 and 92). Brown and Abrams advised Harry Rudberg of his inability to qualify for a District of Columbia liquor license as an individual because of his non-residence (App. p. 135) and suggested formation of a corporation (App. p. 92). Subsequently, appellees Israel Rudberg and Thomas F. O'Neill, contacted Richardson concerning the purchase, because, according to them, Selis had lost interest (App. pp. 24, 25 and 30) and appellees took up the negotiations (App. pp. 32, 33, 34, 35 and 48) deciding to purchase the liquor store themselves or together with Harry Rudberg (App. p. 76). Richardson advised appellees that they could not obtain a liquor license in the District of Columbia as individuals because of their non-residence (App. p. 119). Brown allowed appellees' accountant to examine the liquor store records and Brown's representations were found to be correct (App. pp. 53 and 120). Appellees claimed that Richardson agreed to take care of the liquor license (App. pp. 41 and 51) but Richardson denied this (App. p. 128) and Brown stated he did not hear Richardson do so (App. pp. 116 and 132). Appellees relied upon Richardson and considered that he represented them (App. pp. 51, 55, 61 and 86) although they knew he was not an attorney (App. p. 86) and intended to consult Attorney Canfield, (App. pp. 42 and 51) whom they knew from Shenandoah, Pennsylvania (App. pp. 31 and 32). Israel Rudberg was the leading figure in the transaction and whatever he did was all right with O'Neill (App. pp. 77 and 79). Brown advised appellees that they could not obtain a liquor license in the District of Columbia as individuals because of their non-residence (App. pp. 36, 50, 56, 83 and 115) and suggested formation of a corporation (App. pp. 51, 59, 70, 83 and 115). Appellees knew this prior to signing the contract (App. pp. 54, 60 and 84). Appellees knew they had made a binding commitment when they signed the contract (App. p. 53). Appellees knew they could legally obtain the license by forming a corporation before and after signing the contract (App. pp. 64, 89, 148 and 149). Appellees were

advised by Abrams to obtain counsel of their own choice (App. pp. 58, 62, 85, 129 and 152) but stated this was not necessary (App. pp. 63, 132, 144, and 151). Appellees knew something had to be done concerning obtaining a liquor license such as forming a corporation (App. pp. 60, 120 and 140) and consulted one Levin (deceased at time of trial) even though they knew Austin Canfield and planned to consult him (App. p. 54). Abrams advised appellees they could not qualify as individuals for District of Columbia liquor license because of their non-residence (App. pp. 116, 124 and 128). Abrams was Brown's attorney but in preparing the contract considered himself as acting for all parties in carrying out the agreement previously reached and this was with the approval of appellees (App. pp. 85, 93, 94 and 96). Abrams prepared the contract of sale but inadvertently or through haste (App. pp. 89, 98 and 99) he followed a form (App. pp. 40 and 63) which he had used in another matter involving the purchase of a liquor store by individuals and omitted reference to appellees' non-residence and necessity for formation of a corporation (App. pp. 98, 101, 105, 106 and 107). The contract which was prepared and executed by the parties correctly embodied the agreement between the parties except for Abrams' failure to designate appellees as non-residents of the District of Columbia and to provide for the formation of a corporation by appellees (App. pp. 89 and 90). Appellees consulted attorneys Canfield and Schwartz after signing the contract (App. p. 44) but did not inquire about forming a corporation (App. p. 64) and did not notify Brown of their decision not to go through with the deal until several weeks later (App. pp. 62 and 125). Brown did not know why appellees refused to consummate the transaction even as late as the date of trial (App. p. 117). Brown had made arrangements for the transfer of the lease (App. p. 124). Brown had never authorized Richardson to act for him in any capacity other than as agent to sell his liquor store (App. pp. 117, 124

and 133). Although appellees stated that Selis and Harry Rudberg had withdrawn from the transaction, neither Brown nor Richardson knew that Harry Rudberg or Selis were definitely out of the deal (App. pp. 31, 94, 141 and 148). Richardson did not know why appellees failed to consummate the transaction as late as the time of trial (App. pp. 145 and 148). Brown throughout the transaction advised appellees of their legal inability to obtain a license as individuals and relied upon appellees assuming the obligation of obtaining the license (App. pp. 41, 70, 104, 107, 116, 117, 129 and 130) and agreed to cooperate with them in a corporate set-up (App. pp. 66, 117, 123 and 124). The provision in the contract calling for transfer of the liquor license to appellees as individuals and paragraph fourteen of the contract were not in accordance with the agreement between the parties (App. pp. 98, 104 and 105) and these were Abrams' mistakes (App. pp. 98, 99, 100, 108, and 116) but all other provisions of the contract were in accordance with the agreement between the parties (App. pp. 105, 106, and 107). Appellees' failure to consummate the transaction was not because of their legal inability to obtain the license but for some other reason still undisclosed (App. pp. 64 and 117). Application for transfer of Brown's liquor license to appellees as individuals was prepared by attorney Schwartz (App. p. 45) but was never filed with the A.B.C. Board although no legal impediment prevented its being filed (App. pp. 111 and 112). Appellees knew when they signed the contract that they could not obtain the liquor license as individuals (App. pp. 58, 59, 88, 89, 94, 97 and 98). Brown at no time represented to appellees that they could legally obtain a liquor license as individuals (App. pp. 89, 120, 121, 122 and 123).

ISSUES INVOLVED

I

Whether appellees, knowing when they entered into the contract that they could not obtain an A.B.C. license in the District of Columbia as individuals, are entitled to cancellation of the contract and return of their deposit on the ground of their inability to perform the contract.

II

Whether appellees agreed to form a corporation to take title to the liquor business and obtain transfer of the liquor license, and failed to do so.

III

Whether paragraph twelve of the sales contract provides for liquidated damages or for a penalty.

IV

Whether the lower court erred in excluding testimony concerning the provisions of the contract on the ground that "the contract speaks for itself."

V

Whether appellant Brown was required to tender performance under the contract.

VI

Whether appellees came into equity with clean hands.

VII

Whether appellees assumed the risk of obtaining the liquor license.

SUMMARY OF ARGUMENT

I

Appellees, having entered into a contract for the purchase of a liquor store as individuals with the full knowledge that they were unable to obtain a transfer of the liquor license because of their non-residence, are not entitled to cancellation of the contract on the ground of impossibility of performance inasmuch as the impossibility was not in the nature of the thing to be done but in the personal inability of appellees to do it.

II

Appellees, having agreed to form a corporation to take title to the liquor store and obtain transfer of the license and having failed to do so, breached their agreement and invoked the liquidated damage clause of their contract.

III

Paragraph twelve of the contract provides for liquidated damages and not for a penalty dependent upon the validity of appellants' position on the basic questions in the case as set forth in Appellants' Arguments numbers I and II.

IV

The lower court erred in excluding testimony concerning the provisions of the written contract on the ground that "the contract speaks for itself" since such rule does not obtain in equity actions.

V

Appellant Brown was not required to tender performance under the contract inasmuch as appellees had made it unmistakably clear that they did not intend to perform.

VI

Appellants did not come into equity with clean hands because they attempted to take advantage of Abrams' inadvertence in failing to correctly embody in the written contract the true agreement between the parties.

VII

Appellees assumed the risk of obtaining the liquor license when they signed a contract which they knew could not be performed by them as individuals.

ARGUMENT

I

It is undisputed that all parties to this action knew and understood prior to the execution of the written contract that appellees could not obtain a transfer of the liquor license to themselves as individuals because of their inability to qualify under the provisions of the Alcoholic Beverage Control Act and the regulations of the Alcoholic Beverage Control Board. This knowledge was conveyed to appellees on many occasions by appellants and by the broker, Richardson, thereby eliminating any suggestion that appellants attempted to deceive appellees. The negotiations, beginning with Harry Rudberg and terminating in the written agreement with appellees, covered a period of approximately six weeks during which time appellees were constantly told by Brown to look into the matter of purchasing the store carefully, to investigate, to make certain they knew what they were doing. In addition to the information furnished by appellants, it was testified that appellees knew, before being so told by appellants, that they could not qualify as individuals for a liquor license in the District of Columbia. Under these circumstances it would appear that the rule of caveat emptor should apply to

appellees. They undertook to buy something which they could not enjoy; to do something which they could not do.

There does not appear to be any case in the District of Columbia squarely in point with the situation presented in the case at bar. However the position of appellees is obviously that they contracted to do something which was legally impossible. Even if this be true, appellees were not entitled to the relief requested since it is clear that any impossibility which did exist was not in the nature of the thing to be done (the obtaining of a retail liquor license) but in the inability of the appellees to do it (failure to qualify as individuals under the Act and regulations).

In the case of *Salingh v. General Exchange Insurance Corp.*, 217 Iowa 560, 250 N. W. 13, the Court said:

“Impossibility of performance of contract is no excuse where at the time of signing the contract the promissor knew of a contingency which might render performance impossible.”

In the case of *The City of Montpelier v. National Surety Co.*, 97 Vt. 111, 122 A. 484, the Court said:

“To relieve one from performance of his contract because of impossibility, the impossibility must consist in the nature of the thing to be done and not in the inability of the person to do it. Impossibility which is personal to the promissor and does not inhere in the nature of the act to be performed does not excuse non-performance. Where a contract is to do a thing which is possible in itself, the promissor will be liable for breach thereof notwithstanding it was beyond his power individually to perform it for it is his own fault if he undertakes to do a thing which to him is an impossibility.”

The foregoing case cited the following cases in support of this doctrine: *Hakanson v. Western Empire Land Co.*, 132 Minn. 74, 155 N. W. 1043; *Hansen v. Rockwell Dock and Warehouse Co.*, 100 Wash. 46, 170 P. 346.

In the case of *Elmira Lumber Co. v. Owen et al*, 96 Ore. 127, 188 P. 415, the Court said:

"The law of the instant case is settled by the decision of this Court in *Reid v. Alaska Packing Co.*, 43 Ore. 429, in which the syllabus lays down the rule that: 'To excuse performance of a valid and lawful contract made upon a sufficient consideration, it must appear obviously impossible of performance in the nature of the thing by anyone; mere impossibility of the promisor is not enough.' The rule to be deduced from the authorities is that if one enters into a valid contract for a sufficient consideration to do a lawful thing possible in itself * * * that is, in the nature of the things to be done, he must either carry out the contract according to its terms or answer in damages for his failure to do so. The mere impossibility of performance in fact will not be enough, but the contract must be obviously impossible upon its face before such defense can be made."

This same statement of the law is to be found in *Restatement of the Law, Contracts, Volume 2, Section 455*.

II

Although appellees denied in a general way that they had agreed to form a corporation to take title to the business in order to obtain a transfer of the license, they admitted on numerous occasions in their testimony that they knew prior to signing the contract that something, such as the formation of a corporation, was required to be done by them in order to obtain a license. They admitted that Brown, during the negotiations, had told them that they would have to form a corporation. In light of the additional fact that they knew they could not qualify as individuals, it becomes obvious that when they finally decided to buy the liquor business, it was with the understanding that they would form a corporation. Any different deduction would be illogical and not borne out by the evidence. It is submitted, therefore, that the agreement

which reached fruition between the parties prior to the actual preparation and execution of the typewritten document, embodied all of the provisions of the written contract except for the following omissions and inaccuracies:

1. The written contract should not have called for a transfer of the liquor license to appellees as individuals inasmuch as all parties knew that this could not be done.

2. The written contract should have contained a representation to the effect that appellees were non-residents of the District of Columbia since they were so in fact and this fact was known to all parties.

3. The written contract should have contained a provision to the effect that appellees would cause a corporation to be formed for the purpose of taking title to the liquor store and to obtain a transfer to the said corporation of the liquor license.

4. In light of points one, two and three hereof, paragraph fourteen of the written contract should have been omitted since the contract as drawn did not express the full and true agreement between the parties.

5. The testimony in the case shows that except for points one, two, three and four hereof, the written contract represented the true and real agreement between the parties and should be enforced.

Appellees position is that they were unable to perform the terms and conditions of the written agreement and that it should therefore be cancelled. However, it has already been pointed out, under Appellants' Argument I hereof, that impossibility of performance because of the promissor's inability is not ground for cancellation. When it is remembered that the omissions and inaccuracies which were contained in the written contract resulted from the inadvertence, haste, or carelessness of Abrams and not because of fraud, undue influence, misrepresenta-

tion or deceit on the part of appellants, it is submitted that appellees' position is not tenable. Appellants resistance to appellees' claim amounted in substance to a petition for reformation of the written agreement to conform to the real agreement which had been reached between the parties and since this action was in equity, the lower court should have reformed the written contract by denying appellees the relief requested. To adopt a different view is to allow appellees to take advantage of their own wrong-doing. It is obvious that appellees could perform the terms and conditions of the real agreement between the parties. It is submitted therefore that since appellees agreed to form a corporation, their failure to do so constituted a breach of their contract invoking the liquidated damage clause and they were therefore not entitled to the relief requested.

III

The law is well settled that parties to a transaction such as the one involved in this case, where damages for a breach are too uncertain to be accurately measured in advance, have a right to provide for liquidated damages in a sum certain in the event of a breach provided the amount of damages is reasonable under the circumstances of the particular case. See 25 C. J. S. *Sections 101 through 109 and cases cited.* In the case at bar the transaction involved a retail liquor store at a price of \$35,000.00 plus inventory of approximately \$40,000.00 making a total of approximately \$75,000.00 involved. The liquidated damages provided in the sum of \$5,000.00 are therefore most reasonable and could not be considered a penalty. The question then is not whether paragraph twelve provides for liquidated damages or for a penalty at all. It is whether paragraph twelve as part of the entire contract should or should not be enforced. If this Court should agree with appellees' position in this case, paragraph twelve would be void and unenforceable not because it provides for a penalty but because it is part of a contract which should be cancelled.

If, however, the Court should agree with appellants' position on the basic questions in this case which have been covered in Appellants' Arguments I and II, then it is submitted that paragraph twelve, as part of a valid and binding contract, provides for liquidated damages and must be enforced.

IV

The lower court erred in refusing to allow testimony by Israel Rudberg on cross examination as to his intentions in connection with the contract on the grounds that "the contract speaks for itself". This same ruling was made at other points in the trial. This action was in equity and the appellees came into court on the proposition that the written contract was not possible of performance by the appellees and should therefore be cancelled. In order for appellees to show that this was so, it was necessary for them to go beyond the written contract, since the written contract contained nothing to indicate that appellees were non-residents of the District of Columbia and therefore not qualified to obtain a license as individuals. Since appellees case required testimony beyond the scope of the written agreement, it was proper for appellants to elicit on cross examination any evidence which might controvert appellees position and show the real intention of the parties. The lower court's action therefore in holding that "the contract speaks for itself" shows that it misconceived the nature of the proceeding before it, was inconsistent with the nature of the action and constituted reversible error.

See *Berg v. Erickson*, 234 Fed. 817; *Royal Italian Government v. National Brass and Copper Tube Co.*, 294 Fed. 23.

V

Assuming appellants' position herein on the basic questions to be correct, the action of appellees in failing to

consummate the transaction in accordance with their agreement constituted breach of contract. Under these circumstances, appellant Brown was not required to tender performance.

See *Lamborn and Co. v. Log Cabin Products Co.*, 291 Fed. 435; *Bu-Vi-Bar Petroleum Corp. v. Krow*, 40 F. 2nd 488; *Somers v. Tayloe*, 2 D. C. 138.

VI

It is a cardinal rule in equity cases that the party requesting relief must come into court with clean hands. *Martin v. Luster*, 85 F. 2nd 833. A reading of the testimony in this case leads to the conclusion that appellees were not as pure and innocent as they would have the Court believe. They were both old enough to be charged with the responsibility and consequences of their conduct; they both had extensive business experience; O'Neill had been for many years in the insurance business in which he came in contact with matters of legal import and had seen many forms of contracts on many occasions. It is not logical to suppose that after six weeks of bargaining and investigating, they put their names to a contract calling for the expenditure of many thousands of dollars with the full knowledge that as individuals they could not hope to obtain transfer of the license which was absolutely essential for the continued operation of the business unless they had agreed to do something which would make that license available (formation of a corporation). If they did so agree, they are bound by that agreement even though the provision covering the same was omitted through inadvertence, haste, or carelessness of Abrams. It is clear that Brown was guilty of no deceit, undue influence, misrepresentation or fraud. His conduct throughout the negotiations was above reproach. He repeatedly warned appellees that as individuals they could not obtain the license and told them they would have to form a corporation

to qualify. Appellees complain that the broker, Richardson, told them that he could take care of the license and that this was poor advice and that since Richardson was Brown's agent, Brown is responsible for Richardson's alleged misrepresentation. Firstly, it is submitted that Richardson was Brown's agent only for the purpose of selling the liquor store and for no other purpose whatsoever. There is no evidence that Brown ever told appellees that he or Richardson or anybody else could take care of the license for them. Secondly, Brown was under no duty to appellees to advise them what to do about the license. The evidence shows that they chose to make it their own responsibility. If Richardson did say he could take care of it (which Richardson denied) and appellees chose to rely on him instead of seeking experienced counsel, what business was that of Brown's? He had done everything he could to steer appellees straight. The testimony shows that appellees, independently of Brown, chose to rely on Richardson and felt that Richardson was representing them. If they made an unwise choice in selecting an advisor, they should not be allowed to place the blame for the unfortunate consequences upon an innocent party (Brown). And once they made their bargain, for them to pounce upon the opportunity created by Abrams' carelessness in failing to correctly put on paper what had been agreed upon, amounts to bad faith.

It is therefore respectfully submitted that the mere filing of the complaint in this case, in light of the true facts revealed by all the evidence, convicts appellees of coming into equity with unclean hands and the lower court should have left them where it found them.

VII

This subject has been partially covered in other parts of this brief. A few additional remarks are pertinent however.

When the negotiations began with Harry Rudberg (not a party to this action) both Richardson and Brown advised that a non-resident individual could not obtain a liquor license in the District of Columbia. The answer was that he (Harry Rudberg) knew all about that and would take care of it. Mention was made of one Selis, a relative of Harry Rudberg, who lived in the District of Columbia, and the impression created that Selis would put in money or take part in the transaction in some way, although the details were not furnished. When appellees came into the picture, this same line was followed. When Richardson and Brown told appellees they could not get the license as individuals, the answer was that they knew all about that (apparently from Harry Rudberg) and would take care of it. The negotiations continued, Brown constantly warning appellees that they would have to form a corporation, or do something other than take title as individuals, in order to get the license. The deal was finally settled and terms agreed upon between appellees and Brown, including price, deferred payments, transfer of lease, deposit, liquidated damages, etc., and the parties proceeded to Abrams' office. It must be remembered that they had been there once before and the deal had failed because of the inadequacy of the deposit. When they got to Abrams' office, it was late afternoon and Abrams and appellees were in a hurry (appellees to get the deal closed and go back to Shenandoah, Pennsylvania, and Abrams to go home for dinner). Brown assumed that Abrams had reduced to writing what he (Brown) knew had been agreed upon after weeks of waiting for appellees to make their decision and readily signed the documents presented to him. Appellees assumed the same thing. Abrams, by his own statement, followed a form of contract which he had used in another transaction and merely changed the names, prices and terms to fit this deal. Abrams testified that, although (as he put it) it would have been better if he had included the provision as to formation of a corporation by appellees, he

was trying to save time and he felt that he had covered the intention of appellees to unilaterally assume the risk of qualifying themselves for the issuance of the license in such manner as they saw fit. The atmosphere was cordial and friendly, weeks of delay having finally terminated in the long-awaited contract. Abrams, however, in his haste, took too much for granted and the errors set forth in Appellants' Argument II were committed. This does not change the basic fact that appellees did agree to assume the risk of getting the license and Abrams so testified. Nor does the fact that Abrams failed to set down on paper what the parties had agreed upon change what the parties had agreed upon.

Under these circumstances, even if it should be considered that appellees had not agreed to form a corporation, it is submitted that appellees assumed the risk of procuring the liquor license and that they are now estopped to deny said assumption of risk.

See *Cutler v. Ellis*, 134 A. 308.

CONCLUSION

In conclusion, it is respectfully submitted that the judgment herein should be reversed with instructions to the lower court to enter judgment in favor of appellants.

Respectfully submitted,

LEON M. SHINBERG

PHILIP SHINBERG

JOSEPH LEVIN

1331 G Street, N. W.

Washington, D. C.

Attorneys for Appellant